

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, ) Case No.  
 ) 1:19-cr-2032-SMJ-1, 2  
Plaintiff, )  
 ) September 29, 2020  
v. )  
 ) Yakima, Washington  
JAMES DEAN CLOUD (01); and )  
DONOVAN QUINN CARTER CLOUD ) Evidentiary Motion Hearing  
(02), ) Day 1, Volume I  
 ) Pages 1 to 244  
\_\_\_\_\_  
Defendants. )

BEFORE THE HONORABLE SALVADOR MENDOZA, JR.  
UNITED STATES DISTRICT COURT JUDGE

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1 (September 29, 2020; 9:01 a.m.)

2 THE COURTROOM DEPUTY: All rise.

3 (Call to Order of the Court.)

4 THE COURT: Please be seated.

09:01:32 5 THE COURTROOM DEPUTY: Matter before the Court is *United*  
6 *States of America v. James Dean Cloud and Donovan Quinn Carter*  
7 *Cloud*, Cause No. 1:19-cr-2032-SMJ, Defendant 1 and Defendant 2.

8 Counsel, each time you address the Court, please state  
9 your name for the court reporter to make an accurate record.

09:01:57 10 Please -- oh.

11 Counsel, please state your presence for the record,  
12 beginning with plaintiff's counsel.

13 MR. BURSON: Government's counsel?

14 THE COURT: Government's.

09:02:08 15 MR. BURSON: Good morning, Your Honor. Richard Burson  
16 and Tom Hanlon for the United States, joined today by Agent Troy  
17 Ribail with the FBI.

18 THE COURT: Good morning to all three of you.

19 MR. McENTIRE: Good morning, Your Honor. Jay McEntire,  
09:02:19 20 as well as Lorinda Youngcourt, as well as Jeremy Sporn on behalf  
21 of James Cloud.

22 THE COURT: Good morning.

23 Good morning, Mr. Cloud -- James Cloud. Good morning,  
24 sir.

09:02:29 25 DEFENDANT JAMES CLOUD: Good morning.

1 MR. SMITH: Your Honor, Rick Smith and Mark Larranaga on  
2 behalf of Mr. Donovan Cloud.

3 THE COURT: Good morning to you two.

4 Good morning, Mr. Cloud.

09:02:42 5 Counsel, I wanted to go over a few things today; more  
6 than anything, just process. Let me just get this computer set  
7 up here.

8 All right. So as I understand, there are -- there are  
9 three motions before the Court, and I want to go over again what  
09:03:28 10 the Court anticipates, and I want to hear discussion from you  
11 all if that's the plan, if that's what you all agree to.

12 As a preliminary matter, the courthouse has been closed  
13 to the public. However, the public line is open, so they -- the  
14 public can have access to this hearing.

09:03:55 15 The parties are free to remove your masks when you are  
16 asking questions, and you can ask those questions from your  
17 seated position. You do not have to approach the podium. If  
18 there is a problem, we will clarify, with any issues of not  
19 being able to understand you. You can keep your mask if you  
09:04:25 20 wish to keep it on while you're asking the questions as well.  
21 And the same will be true for the witnesses; they can remove  
22 their masks while they're testifying or they can keep their  
23 masks, as they feel comfortable. It will be -- it will be up to  
24 that individual witness.

09:04:43 25 Any questions about that process?

1 MR. McENTIRE: No, Your Honor.

2 MR. BURSON: No, Your Honor.

3 THE COURT: As I indicated, there are three motions.

4 The Court will begin first with the motion to suppress JV's

09:05:07 5 tainted identification, as it's titled. The second motion is a

6 motion in limine regarding Mr. [REDACTED] false memory. And

7 the third is a motion to exclude EZ's unreliable ID.

8 A question for the parties, and we want the record to be

9 consistent: The parties have used initials for two individuals

09:05:34 10 yet not for the third. I think, for consistency sake, we should

11 either do all initials and refer to the parties by that so that

12 the court record is clear and, again, there's no ambiguity.

13 Is there a reason why we have chosen to use the full

14 name of the second individual?

09:05:57 15 MR. McENTIRE: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. McENTIRE: The reason was -- is LL had voluntarily

18 met with the *Yakima Herald Republic* reporter, and that resulted

19 in an article published online, so his name was freely available

09:06:21 20 as witness slash victim. Based on that, I felt comfortable

21 using LL's name, since he had essentially made his own decision

22 to make his name publicly available to the universe. And so

23 that's why I had elected in that motion to refer to him by his

24 full name, as [REDACTED], as opposed to the other two

09:06:44 25 individuals, EZ as well as JV.

1 And so that was one of the questions preliminarily that  
2 we had for the Court, is what the Court would prefer to do with  
3 that.

4 In that vein, Your Honor, throughout the motions, I  
09:07:00 5 believe all three motions, I consistently referred to both James  
6 Cloud and Donovan Cloud always by their first names to provide  
7 clarity.

8 THE COURT: Right.

9 MR. McENTIRE: And just to let the Court know, for  
09:07:13 10 purposes of the hearing today, I intend to do the same thing so  
11 there's a clear record that whenever we're referring to James  
12 Cloud, it's clear, and whenever we're referring to Donovan  
13 Cloud, it's also clear.

14 THE COURT: Thank you.

09:07:25 15 Anyone else from the defense like to speak to that  
16 point?

17 Okay. What's the Government's position?

18 MR. BURSON: During the course of this hearing, Your  
19 Honor, the Government's position is we should use initials for  
09:07:37 20 LL as well, first of all, for consistency, as the Court pointed  
21 out; but because the other two witnesses at issue here, they did  
22 not go to the media, their identities haven't been revealed.  
23 And second of all, the Government has an obligation, and,  
24 respectfully, I think this Court does, too, to protect the  
09:07:54 25 identity of witnesses. Whether or not those witnesses have



1 taken action that sacrifices their own protection, I don't think  
2 the Government or this Court should then go the extra step and  
3 just go ahead and make the -- make their name a matter of public  
4 record.

09:08:07 5 THE COURT: Okay. You know, I agree. I think it's -- I  
6 think it's a good practice to refer to these individuals by  
7 their initials. It will be consistent throughout. So why don't  
8 we do that, Counsel. That will -- again, it will -- one, it's  
9 establishing the record as to the reasoning, but I think it  
09:08:29 10 makes sense to do that, just to be consistent.

11 Also, and you all know this, you all have appeared in  
12 front of me on various motions, but you know there's no  
13 tag-teaming. One attorney is going to speak on any motion or  
14 any witness. You can confer, obviously, with co-counsel, but  
09:08:57 15 one attorney at a time. It gets a little confusing, and the  
16 record becomes unclear, when that doesn't happen.

17 So -- and just for the Court's understanding, who is  
18 going to be handling -- from the -- from the defense, and who is  
19 going to be handling Mr. -- or Agent -- is it Ribail?

09:09:25 20 MR. BURSON: I will, Your Honor.

21 THE COURT: Okay.

22 MR. BURSON: For the record, Richard Burson.

23 THE COURT: Thank you, Mr. Burson.

24 And from the defense?

09:09:35 25 MR. McENTIRE: For James Cloud, Jay McEntire will be

1 handling all of the motions and all of the witnesses.

2 THE COURT: Okay.

3 MR. SMITH: Your Honor, I will be handling on behalf of  
4 Donovan Cloud.

09:09:58 5 THE COURT: Okay. Got it.

6 Let's see. Okay. Any other preliminary issue that we  
7 need to address at this time?

8 MR. McENTIRE: I do have one, Your Honor. I did have an  
9 open question as to who, in fact, is calling in on the Court's  
09:10:15 10 public line.

11 THE COURT: Who is calling in?

12 MR. McENTIRE: Correct, Your Honor. And the reason I  
13 had a question is I wanted to check and see if there were any  
14 other specifically listed victims that may be calling in on the  
09:10:31 15 Court's public line and listening to this hearing.

16 THE COURT: I don't know if there's a way for us to --  
17 to know that. Maybe there is.

18 MR. HANLON: Your Honor, if I could speak with  
19 Mr. McEntire for just a moment?

09:10:43 20 THE COURT: Sure.

21 (Counsel conferring.)

22 THE COURT: I'm sorry, Counsel?

23 MR. McENTIRE: Your Honor, I just had an opportunity to  
24 confer with Mr. Hanlon -- and would the Court prefer me to be  
09:11:23 25 standing or seated when I address the Court?

1 THE COURT: Seated, I think, is easier for you. So why  
2 don't we do that.

3 MR. McENTIRE: Thank you, Your Honor.

4 I just had an opportunity to confer --

09:11:30 5 THE COURT: And your mic is on, correct?

6 MR. McENTIRE: It is, Your Honor.

7 THE COURT: Okay. Thank you.

8 MR. McENTIRE: I just had an opportunity to confer with  
9 Mr. Hanlon, and the individuals that would be listening in on  
09:11:42 10 this hearing are essentially family members or related to the  
11 deceased rather than the actual -- the individuals that I was  
12 concerned about, Your Honor, would either be if JV was listening  
13 in on this hearing --

14 THE COURT: Oh, witnesses you mean, or potential  
09:12:00 15 witnesses.

16 MR. McENTIRE: Not necessarily potential witnesses. My  
17 concern, Your Honor, is under 18 U.S.C. 3771, which is the Crime  
18 Victim Rights Act --

19 THE COURT: Right.

09:12:11 20 MR. McENTIRE: -- it gives victims certainly a right to  
21 be present and notified and participate in these court hearings.

22 THE COURT: Right.

23 MR. McENTIRE: However, there's an exception to it, and  
24 specifically the exception under (a)(3), which is unless the  
09:12:23 25 Court finds, after receiving clear and convincing evidence, it

1 determines that the testimony by the victim would be materially  
2 altered if the victim heard other testimony at that proceeding.

3 So my concern, Your Honor, was that especially with  
4 respect to [REDACTED] -- JV, especially with respect to LL, and  
09:12:40 5 especially with respect to EZ, that if they were participating  
6 in this hearing or listening to this hearing, they would be  
7 hearing substantive testimony throughout the course of today, as  
8 well as tomorrow, involving the science behind eyewitness  
9 identification, what happened with respect to their particular  
09:12:57 10 identifications. And my concern is, speaking straight to the  
11 heart of that exception under 3771, is that their testimony  
12 could be materially altered by listening to essentially a  
13 play-by-play of, from defenses' perspective, what went wrong  
14 with those lineups.

09:13:13 15 THE COURT: Thank you. But it's my understanding that  
16 they are not.

17 Is that -- is that the Government's understanding as  
18 well?

19 MR. HANLON: That is our understanding, Your Honor. I  
09:13:21 20 provided the names to Mr. McEntire of the people who reported  
21 they will be listening today, so we don't have an issue. I  
22 can't guarantee for certainty they're not listening today, but  
23 the ones that reported to us, "Hey, we're listening," none of  
24 the folks that he's worried about have said they're going to be  
09:13:35 25 listening today. Specifically, JV stated he will not be

1 listening today.

2 THE COURT: Okay. Okay. Any -- anything else on that?

3 MR. McENTIRE: No, Your Honor. I just wanted to  
4 essentially lay out the record that that was one of the  
09:13:47 5 concerns, if those were any one of the individuals that would be  
6 calling in.

7 THE COURT: The information that the Court has is that  
8 there may be seven individuals that are -- that are on the  
9 phone, so that's the information that we have.

09:14:08 10 Okay. Again, any preliminary matters that anyone wants  
11 to address at this point? Anything else?

12 MR. McENTIRE: Not from James Cloud's perspective, Your  
13 Honor.

14 THE COURT: Mr. Smith?

09:14:27 15 MR. SMITH: No, Your Honor. Thank you.

16 MR. BURSON: Nothing from the Government, Your Honor.

17 THE COURT: Very well.

18 We're going to start, then, with the defense motion with  
19 regards to JV's alleged tainted identification.

09:14:43 20 And one of the things that I -- as I mentioned -- again,  
21 you all have practiced before me, so you know I don't hide the  
22 ball. And so here's -- here's a question, and really a question  
23 for the defense, and maybe this will be elicited from the  
24 testimony that will come out. I'm not asking for argument, but  
09:15:04 25 I want to tell you sort of where my brain is on this issue, and

1 what my concerns are, and what I'm trying to find out; if --  
2 what the testimony supports or doesn't support.

3 When I look at *Perry*, that was, again, decided just a  
4 few years ago, what the Court seems to be concerned about is  
09:15:28 5 that coordination between -- in order to establish sort of the  
6 police misconduct, the Court seems to be concerned with that  
7 coordination between government agencies, police departments,  
8 in -- in establishing this particular factor. And so I'm going  
9 to want to know what, if any, of that type of coordination did,  
09:15:58 10 in fact, occur. And I presume that that will be elicited from  
11 the -- from the testimony, whether it was arranged, rigged,  
12 organized -- again, that's the language that the Supreme Court  
13 uses.

14 Now, Sotomayor, in dissent, is, you know -- I would  
09:16:22 15 argue is frustrated by what the majority have done, but she, of  
16 course, is in the minority. And so that's the case of the law.  
17 So I'm going to want to hear testimony on that point one way or  
18 another so that the Court is clear on -- on that -- on that  
19 point.

09:16:41 20 Also, the other factor discussed in *Perry* is the -- is  
21 the -- whether it was unnecessarily suggested influence. The  
22 question is whether or not it's unnecessarily suggested. The  
23 "unnecessary" part of that -- that point is going to be clear.  
24 So I'm going to want to hear testimony on that or -- and  
09:17:08 25 obviously argument on that particular point. So make sure you

1 focus on that.

2 And from the -- and with regards to the third point, I'm  
3 interested to hear the Government's position in terms of the  
4 testimony that comes out with regards to the reliability, given  
09:17:41 5 the totality of the circumstances. So I'm interested to hear  
6 the Government's position there.

7 And I was a little puzzled by the Government's argument  
8 that -- that JV, having significant opportunity, favors a later  
9 positive identification, in terms of its reliability. So I'm  
09:18:15 10 going to want to hear how the testimony establishes that and  
11 what the argument is towards that, just so I'm clear in my head  
12 how you all -- how you all are seeing this.

13 So, again, I just -- ultimately, there's a 403 argument  
14 as well. So I want to see how, in spite of all of that, how  
09:18:34 15 really -- although it's prejudicial, what -- you know, many  
16 things are prejudicial, from the defenses' perspective, I'm  
17 sure, but how is that outweighed by its incredibly probative  
18 value. So that's another point that I want to make sure that  
19 that is clear in your presentations today and tomorrow.

09:19:00 20 So, again, that's how -- those are the questions that I  
21 have in my mind, and I'm interested to see what the testimony  
22 shows.

23 So, with that in mind, I think we're ready for our first  
24 witness, and that would be Agent -- is it "Ri-bell"? How is  
09:19:17 25 that pronounced?

1 MR. BURSON: "Ree-bail," Your Honor.

2 THE COURT: I'm sorry?

3 MR. BURSON: Agent Ribail.

4 THE COURT: Ribail. Mr. Ribail I recognize; he's  
09:19:27 5 testified before. But I apologize for mispronouncing your name.  
6 All right.

7 MR. BURSON: Before we begin, Your Honor, could the  
8 Court repeat what it said it was concerned with regarding JV's,  
9 I believe, significant opportunity to view? Was that what the  
09:19:44 10 Court was wondering about?

11 THE COURT: Yeah. The Government must show the  
12 reliability, given the totality of the circumstances. And so  
13 one of the questions I have is understanding the Government's  
14 argument as to that point, frankly. That's really it. So I  
09:20:04 15 want to make sure I understand how you're making the point that  
16 under the totality of the circumstances that that is, in fact,  
17 reliable.

18 MR. BURSON: Understood.

19 THE COURT: Okay.

09:20:13 20 MR. BURSON: And I know we have the three pending  
21 motions, Your Honor, but Agent Ribail's testimony is going to  
22 cover two of those motions --

23 THE COURT: Okay.

24 MR. BURSON: -- or be relevant to two of those motions.  
09:20:23 25 The Government's subsequent witnesses will cover the third



1 pending motion. And I just want to make sure everyone is on the  
2 same page --

3 THE COURT: Is your mic on, Counsel?

4 MR. BURSON: It is, Your Honor.

09:20:36 5 THE COURT: Okay. And why don't you have a seat,  
6 because, again, the public is listening in, and I want to make  
7 sure that we're capturing that on the microphones, so -- and I  
8 know you're doing it out of habit and out of practice and out of  
9 deference, and I appreciate that. Thank you. But I want to  
09:20:52 10 make sure everyone is capturing what you're saying and that the  
11 record is clear and that the public is able to hear.

12 So, go ahead.

13 MR. BURSON: I will remain seated, Your Honor.

14 So just wanted to make sure everyone is on the same  
09:21:03 15 page. We're taking testimony relevant to all the motions today,  
16 and then argument will be after the conclusion of testimony in  
17 all three motions.

18 THE COURT: Very well. That makes sense. All right.

19 Is that the defenses' understanding?

09:21:15 20 MR. McENTIRE: It is, Your Honor.

21 THE COURT: Okay. That makes sense. All right. So  
22 let's go forward with our first witness.

23 MR. BURSON: The Government will then call Special Agent  
24 Troy Ribail with the Federal Bureau of Investigation.

09:21:31 25 THE COURT: All right. Come on up.

1 THE COURTROOM DEPUTY: Will you please raise your right  
2 hand.

3  
4 RONALD TROY RIBAIL,  
09:21:42 5 called as a witness on behalf of the Plaintiff, having first  
6 sworn or affirmed, testified under oath as follows:

7 THE WITNESS: I do.

8 THE COURTROOM DEPUTY: Thank you.

9 When you are testifying, you're welcome to take off your  
09:21:57 10 mask, if you wish. There's a bottle of water there. Please  
11 take it with you when you step down.

12 If you could please state your first and last name for  
13 the record, and spelling them both for the record.

14 THE WITNESS: Okay. Troy Ribail; T-R-O-Y, R-I-B-A-I-L.

09:22:16 15 THE COURT: Go ahead, Counsel.  
16

17 DIRECT EXAMINATION

18 BY MR. BURSON:

19 Q Good morning, Agent Ribail.

09:22:19 20 A Good morning.

21 Q Just for the record, is that your full legal name?

22 A It is not.

23 Q Could you please give us that for the record, and spell  
24 that as well.

09:22:25 25 A It is Ronald Troy Ribail.

1 Q How long have you been with the Federal Bureau of  
2 Investigation?

3 A Seventeen years.

4 Q Okay. And over the course of those 17 years, how many of  
5 them were here in the Yakima resident office?

6 A I've almost been here five years now, I think.

7 Q And where were you before that?

8 A I was in Virginia, prior -- prior to here.

9 Q Okay. During the time that you've been here with the  
10 Yakima resident office, primarily what types of crimes have you  
11 spent your time investigating?

12 A Mainly I would say drugs, gangs, violent crime, including  
13 the Yakama Indian Reservation.

14 Q Have you received training from the FBI on the interviewing  
15 of victims and witnesses and victim witnesses?

16 A Yes.

17 Q Okay. Have you received ongoing training during your  
18 career with the FBI, both on the job and -- and formal or  
19 informal?

20 A Yes.

21 Q What about lineup procedures? Have you received training  
22 on lineup procedures?

23 A Yes.

24 Q Okay. How many lineups would you say you've conducted?

25 Let's -- and let's -- let's answer that question for now only

1 with respect to photographic lineups.

2 A I would say approximately 20.

3 Q Okay. How many lineups have you maybe not conducted  
4 yourself but observed or assisted with?

09:23:56 5 A Probably another ten, maybe 20.

6 Q Okay. Now, if we expanded that to other types of  
7 lineups -- in-person lineups, photo book lineups containing  
8 larger compilations -- how many lineups do you think that you've  
9 either participated in or -- or conducted yourself?

09:24:13 10 A Fifty to 100, probably.

11 Q Okay. Are you familiar with a document or publication,  
12 internal publication entitled "Procedures For Eyewitness  
13 Identification of Suspects, Policy Implementation Guide,"  
14 published November 26th of 2013 by the FBI?

09:24:32 15 A Yes.

16 Q Okay. And you've -- you were familiar with that document?

17 A Yes.

18 Q Okay. Were you familiar with that document prior to June  
19 of 2019?

09:24:43 20 A Generally, yes.

21 Q Okay. "Generally" meaning you had read it and reviewed it  
22 at some point in time?

23 A I think I was -- maybe phrase it a different way --  
24 probably provided some sort of training and/or have seen it, but  
09:24:58 25 I don't know that I've -- had read the whole thing front to

1 back, necessarily.

2 Q Okay. All right. And what about another publication  
3 entitled "Procedures For Eyewitness Identification of Suspect  
4 Policy Guide," titled June -- sorry, published June 9th of 2019?  
09:25:18 5 As we sit here today, are you familiar with that document?

6 A I am.

7 Q Now, that document was published June 9th of 2019; is that  
8 right?

9 A Yes.

09:25:27 10 Q And so --

11 THE COURT: And, Counsel, just for the Court's  
12 clarification, can you clarify who produces this document, what  
13 the document is, just so that I'm -- the record is clear.

14 MR. BURSON: I can, Your Honor. And you're referring  
09:25:39 15 only to the second document?

16 THE COURT: Yes.

17 MR. BURSON: Okay.

18 BY MR. BURSON: (Continuing)

19 Q So the document I was just referring to published June 9th,  
09:25:46 20 2019, that was an FBI-published document, Agent Ribail?

21 A Yes.

22 Q Okay. And did you review it on June 2019 [sic], the day  
23 that it was published?

24 A No.

09:25:59 25 Q Okay. Was that -- it was a Sunday, I believe.

1 A Correct.

2 Q Okay. Were you engaged in an investigation during that  
3 time?

4 A Yes.

09:26:06 5 Q Okay. Did you administer a lineup on that day?

6 A Yes.

7 Q And did that involve an individual going by the initials of  
8 JV?

9 A Yes.

09:26:16 10 Q Okay. Did you administer a lineup on that day to an  
11 individual going by LL?

12 A Yes.

13 Q Okay. Had you had a chance to review that publication,  
14 being published that same day, prior to administering those  
09:26:29 15 lineups?

16 A No.

17 Q So I just mentioned some dates. I'd like to talk a little  
18 bit more about those dates. I'd like to take you back to  
19 June 8th of 2019. That was a Saturday.

09:26:46 20 What were you involved in that day?

21 A On that day I was -- I was the duty agent, or on-call  
22 agent, and I received a call from Yakama Nation Tribal Police  
23 Department that there were -- there was a -- I think the initial  
24 call was maybe a double homicide or triple homicide, out in  
09:27:05 25 White Swan.

1 Q What did you do after you received that call from Yakama  
2 Nation?

3 A I drove out to the physical location.

4 Q Okay. And, roughly, could you just tell us where that  
09:27:19 5 physical location was.

6 A It was on --

7 Q You can refer to the residence, if you know the residence.

8 A It was, uh -- it's on Medicine Valley Road in White Swan.

9 Q Okay. Whose residence was that?

09:27:30 10 A Uh, John Cagle.

11 Q Okay. And when you arrived to that residence, could you  
12 briefly describe what that crime scene appeared to involve, in  
13 terms of illegal conduct?

14 A When I arrived, there was one individual kind of outside  
09:27:46 15 the driveway still alive. They were trying to Medevac him out  
16 of the area. And then there were four other -- or three other  
17 bodies on the property.

18 Q What time did you arrive, roughly, on that Saturday  
19 June 8th, 2019?

09:28:01 20 A It was midafternoon. I would say maybe 3:00.

21 Q Okay. How long do you think you spent at the crime scene  
22 that day?

23 A I was there until after midnight.

24 Q Okay. Were there any other agencies on scene with you?

09:28:16 25 A Yes. The Yakima Sheriff's Office, uh, Tribal Police. Uh,

1 there could have been a few others at that time. And then  
2 later, Washington State Patrol.

3 Q Okay. You left around midnight.

4 When did you next return to that residence?

09:28:31 5 A About 9:00 a.m. the next morning.

6 Q Okay. What were you engaged in in the morning when you got  
7 there on June 9th, 2019?

8 A We executed a federal search warrant on the property.

09:28:47 9 Q Okay. Had that search warrant been obtained overnight or  
10 earlier that morning?

11 A Early that morning, yes.

12 Q All right. And so the execution of the search warrant, how  
13 many agencies were involved in the execution of that search  
14 warrant?

09:28:56 15 A Uh, pretty much all the ones I mentioned. But Washington  
16 State Patrol was the main entity conducting the search for us.

17 Q How many agents and officers, roughly, would you say, if  
18 you had to estimate, based on your observations, were there at  
19 the crime scene involved in the investigation on June 9th, 2019?

09:29:22 20 A The entire case, like people out in the field doing  
21 different things as well? Probably 50.

22 Q Okay. And from the FBI, were you the only agent at the  
23 scene?

09:29:40 24 A On Saturday, yes. But on Sunday there was another agent  
25 out there.



1 Q Okay. And what office was that agent from?

2 A Uh, he works in the Tri-Cities FBI office.

3 Q All right. So in White Swan on that particular day, you  
4 were the only agent from the Yakima resident office on scene?

09:29:59 5 A That's correct.

6 Q Okay. Approximately how much time did you spend that  
7 morning at the Cagle residence?

8 A In the morning, maybe two or three hours; and then later in  
9 the evening, another couple hours.

09:30:11 10 Q All right. So in the morning, two or three hours, so you  
11 left sometime around 11:00 or noon?

12 A Yes.

13 Q Okay. Did the other 50-or-so agents and officers, did  
14 they, for the most part, remain at the crime scene?

09:30:26 15 A Yes.

16 Q Okay. And when you left about two or three hours after  
17 arriving, where did you go?

18 A Uh, I think initially I went with Detective Cypher to their  
19 Zillah substation.

09:30:44 20 Q Okay. And what was the purpose of going to that  
21 substation?

22 A We started making photographic lineups.

23 Q Okay. By that point in time, had you identified some  
24 potential witnesses that you wanted to interview and/or  
09:30:59 25 administer lineups to?

1 A Yes.

2 Q Okay. At the substation, how long did it take to compile  
3 the lineups?

4 A At least an hour. It felt like maybe even up to two hours.

09:31:14 5 Q Okay. And how many lineups in total were compiled?

6 A Four.

7 Q And each lineup, did it contain a different -- well, let's  
8 back up.

09:31:29 9 Were the lineups generating [sic] using the identities of  
10 possible suspects?

11 A Yes.

12 Q Okay. And how many -- you said four.

13 Did each lineup contain one such suspect?

14 A Yes.

09:31:39 15 Q Okay. So the Spillman system is what you used to conduct  
16 the -- or what was used to compile the lineup?

17 A It was Spillman, yes.

09:32:03 18 Q Okay. Can you give us a brief description -- brief -- of  
19 how it is that Spillman generates a lineup when a known  
20 individual, a suspect is -- is used as sort of the base  
21 photograph?

09:32:21 22 A Yes. I am not a Spillman operator, but from being around  
23 other people when they do it, my understanding, and from  
24 observing them do it, is you enter either the subject's name or  
25 their name number, and from there it generates -- it pulls

1 information about that person -- their height, weight, even  
2 race, sex -- and from there it generates a photo lineup for you,  
3 um, of five other pictures, including the subject. And then on  
4 the side, it -- it shows other individuals that might be -- that  
09:32:49 5 are similar. It gives you a choice, I guess, of other people to  
6 add and subtract from the lineup.

7 MR. BURSON: Before I move on, Your Honor, the agent  
8 spoke briefly about two policy guides that were published by the  
9 FBI in 2013 and 2019, respectfully. Those are marked as  
09:33:19 10 Government's Exhibits 1 and 2. I'd like to move to just go  
11 ahead and admit those now.

12 THE COURT: Any objection?

13 MR. McENTIRE: No, Your Honor.

14 THE COURT: They'll be admitted.

09:33:27 15 (Government Exhibit No. 1 admitted into evidence.)

16 (Government Exhibit No. 2 admitted into evidence.)

17 MR. BURSON: May I approach the podium for --

18 THE COURT: You can.

19 BY MR. BURSON: (Continuing)

09:34:18 20 Q Agent Ribail, I'm showing you the cover page of what is  
21 marked as Government's Exhibit 4.

22 THE COURT: I'm sorry. I didn't catch it. Government  
23 exhibit ...?

24 MR. BURSON: 4, Your Honor.

09:34:29 25 THE COURT: 4.

1 BY MR. BURSON: (Continuing)

2 Q Have you seen that document before?

3 A Yes.

4 Q And you can see it on your monitor right now, right?

09:34:37 5 A I can.

6 Q What is this document?

7 A Uh, this is one of the lineups that we made that day.

8 Q Okay. And by "that day," you're referring to June 9th,  
9 2019?

09:34:48 10 A Correct.

11 Q At the substation?

12 A Yes.

13 Q Okay. I'm going to briefly flip through.

14 As you recall, is this the complete lineup that was  
09:35:03 15 generated that day?

16 A Yes.

17 Q All right. And which -- which suspect was this lineup  
18 generated from?

19 A Donovan Cloud.

09:35:19 20 Q And so is this the picture that was used to generate the  
21 remainder of the lineup (indicating)?

22 A Yes.

23 Q Can you see that on your screen Agent Ribail?

24 A Yes.

09:35:48 25 Q Do you recognize this document?

1 A I do.

2 Q What document is this?

3 A It's a -- it's another photo lineup, but this one contains  
4 James Cloud.

09:35:57 5 Q Okay. And this was also generated June 9th, 2019?

6 A Yes.

7 Q I'm going to flip through --

8 THE COURT: Counsel, what exhibit number is this?

9 MR. BURSON: This is marked as Exhibit 5, Your Honor.

09:36:09 10 THE COURT: Okay.

11 BY MR. BURSON: (Continuing)

12 Q I believe you testified that this was generated using a  
13 photo of James Cloud, correct?

14 A Yes.

09:36:29 15 Q Is this the photo of James Cloud --

16 A Yes.

17 Q -- that was used to generate the lineup?

18 A Yes.

19 Q Okay. And both of these exhibits that we just reviewed,  
09:36:39 20 Exhibits 4 and 5, they're in the same condition they were  
21 following their generation that day?

22 A Yes.

23 Q Okay.

24 MR. BURSON: Your Honor, Government moves to admit  
09:36:48 25 Exhibits 4 and 5.

1 MR. McENTIRE: No objection from James Cloud.

2 MR. SMITH: No objection, Your Honor.

3 THE COURT: They'll be admitted.

4 (Government Exhibit No. 4 admitted into evidence.)

09:37:00 5 (Government Exhibit No. 5 admitted into evidence.)

6 BY MR. BURSON: (Continuing)

7 Q So after you produced these lineups, Agent Ribail, where  
8 did you go?

9 A We went to JV's residence.

09:37:17 10 Q Okay. So we've been talking about another crime scene --  
11 right? -- at, I believe you referred to it as Cagle residence at  
12 one point, Medicine Valley another time.

13 What was the -- what was your reason for going to JV's  
14 residence?

09:37:34 15 A Uh, JV and his family, uh, on Saturday, a couple of people  
16 had arrived at their residence and basically carjacked, you  
17 know, their car at gunpoint.

18 Q Okay. When you went to the residence, were you able to  
19 make contact with JV and his family?

09:37:54 20 A Yes.

21 Q Okay. I want to focus primarily on JV.

22 What was your understanding of the incident, as described  
23 by him?

24 A Just generally starting at the beginning?

09:38:14 25 Q Yes.

1 A I believe his wife and a kid were outside working on flower  
2 beds, something like that, when a couple people approached the  
3 house and demanded a car, I think, in simple terms.

4 Q Okay. Are you aware of any more detail that he had  
09:38:32 5 provided before you arrived at the residence or in subsequent  
6 interviews?

7 A Yes.

8 Q Could you enlightened us, please.

9 A Well, yes. So he was interviewed that day by, I believe,  
09:38:43 10 the sheriff's office, but he described both individuals, uh,  
11 like height, you know, size, I think a little bit of clothing,  
12 and that they were both armed.

13 Q Okay. And as far as what happened when those individuals  
14 arrived, what he witnessed, could you tell us what he described  
09:39:00 15 regarding that?

16 A So one of them, I think, had a pistol pointed at his son's  
17 head. Uh, the other individual stayed with JV. JV eventually  
18 got keys to the vehicle, and then that's the vehicle they used  
19 to flee, but they actually brought the son with them, until the  
09:39:18 20 son jumped out.

21 Q Okay. And why did JV go get the keys?

22 A Uh, they were in the garage, I believe. They were inside  
23 the house. He had to go inside the house to get the keys.

24 Q Okay. You said "they" went inside the house.

09:39:33 25 Other than JV, who went inside of the house?

1 A One of the suspects.

2 Q Okay. Accompanied him into the house?

3 A Yes.

4 Q Okay. And JV, as you understand it, retrieved the keys for  
09:39:44 5 what vehicle?

6 A I think initially it was a van.

7 Q Okay.

8 A And then they didn't like -- didn't want the van, so then  
9 he gave them the keys to his truck.

09:39:53 10 Q Okay. When you say "they," you're referring to?

11 A The suspects.

12 Q Okay. And so did he have to go back into the house to  
13 retrieve an additional set of keys?

14 A I don't know. I -- I mean, generally, yes, but I -- my  
09:40:10 15 impression was it wasn't like a long way into the house. It was  
16 kind of like reaching into the -- maybe into the garage. So it  
17 was slightly in, bringing the van keys, and they didn't want the  
18 van so slightly in, switching to the truck --

19 Q Okay.

09:40:24 20 A -- is my impression.

21 Q So there were two retrievals of keys.

22 A Yes.

23 Q Okay. During this time, you said one suspect had a gun to  
24 his son's head, I believe, correct?

09:40:35 25 A Yes.



1 Q What was the other suspect doing, as reported by JV?

2 A He also had a gun, um, described as a shotgun.

3 Q Okay. And what was he doing with that shotgun? Did JV  
4 say?

09:40:44 5 A I would say JV felt threatened by the shotgun, yes.

6 Q Okay. And do you recall how -- how far away JV said he --  
7 he was?

8 A I don't know that there was a specific number, but -- to  
9 the person with the shotgun very close, but from him to his son  
09:41:08 10 and the other suspect, I would say within 20 feet, 10 -- 10,  
11 20 feet.

12 Q Okay. And as reported by JV, what happened after he  
13 retrieved the set of truck keys, after returning the van keys?

14 A Uh, the suspects got in it, they -- they made his son get  
09:41:26 15 in the back of the truck, and then when they left, the son  
16 jumped out of the truck.

17 Q Okay. So the -- the son got into the back of the truck?

18 A Yes.

19 Q Okay. Why did the son get into the back of the truck?

09:41:39 20 A Initially, they were trying to get the son in the front,  
21 and I think the family pled with them to let him -- to allow him  
22 to ride in the back of the truck.

23 Q Okay. Again, just for clarity sake, when you say "they,"  
24 you're referring to?

09:41:53 25 A JV and his family.

1 Q Okay. And when you say "they" wanted to get the son into  
2 the front of the truck, you're referring to?

3 A The suspects.

4 Q Okay. And so if I'm understanding your testimony right,  
09:42:06 5 there was an attempt to -- I don't want to misclarify here, but  
6 "they," referring to the suspects, wanted the son in the cab of  
7 the truck.

8 A Correct.

9 Q Okay. And when -- and when they made that known, what  
09:42:23 10 happened?

11 A JV and his family pled with them to allow him to -- to ride  
12 in the bed of the truck.

13 Q Okay. And so during this time, it sounds like JV and his  
14 family were speaking with the suspects.

09:42:34 15 A Yes.

16 Q Okay. And then -- and so did they convince the suspects  
17 to -- to allow the son to ride in the back of the truck?

18 A They did.

19 Q Okay. Once the son is in the back of the truck, what  
09:42:49 20 happened?

21 A Uh, the truck starts to pull out. I think it had to back  
22 up, stop for a second, then go forward. And as that was  
23 happening, JV and/or his wife were screaming, you know, "Get out  
24 of truck" or "jump" or something, and the son did. And then the  
09:43:05 25 truck left their residence.

1 Q Okay. And so it was after -- it would have been the day  
2 after this incident that you went to JV's residence, correct?

3 A Yes.

4 Q Okay. And you spoke with JV?

09:43:22 5 A Yes.

6 Q What was the -- the primary reason for going to JV's  
7 residence?

8 A To show him the photo lineups.

9 Q And you recall Exhibits 4 and 5 that we just went through,  
09:43:39 10 correct?

11 A Yes.

12 Q And you -- did you show JV all four lineups that were  
13 generated?

14 A Yes.

09:43:45 15 Q Okay. And Exhibits 4 and 5, those were amongst those four  
16 lineups?

17 A Yes.

18 Q Okay. I'm showing you what's marked as Government  
19 Exhibit 3.

09:44:07 20 Do you recognize that document?

21 A I do.

22 Q Okay. Could you briefly describe for us what that document  
23 is.

24 A So it's a Yakima County Sheriff's Department photographic  
09:44:20 25 lineup, it's basically instructions that they use to -- before

1 they show a photo lineup to a witness.

2 Q Okay. And you had gotten this document from where? It's  
3 not an FBI document, correct?

4 A That's correct.

09:44:30 5 Q Okay. It's a Yakima County document.

6 And you retrieved it from?

7 A Uh, Detective Cypher had it.

8 Q Okay. So the document was from Detective Cypher.

9 Who actually administered the lineup?

09:44:45 10 A I did.

11 Q Okay. There's a signature line here. It says, "Officer  
12 Showing the Lineup."

13 Whose signature is that?

14 A Mine.

09:44:55 15 Q Okay. And right here, where it says, "Person Viewing the  
16 Photo Lineup," whose signature is that?

17 A JV.

18 Q Okay. And I believe this indicates June 9th, 2019, is the  
19 day the lineup was administered.

09:45:11 20 A That's correct.

21 Q Now, you've reviewed this document before, it sounds like.

22 A Yes.

23 Q Is it in the same condition as it was on June 9th, 2019,  
24 following the execution and completion of the other notes on

09:45:20 25 here?

1 A Yes.

2 MR. BURSON: Okay. Your Honor, the Government moves to  
3 admit Government's Exhibit 3.

4 MR. McENTIRE: No objection from James Cloud.

09:45:32 5 MR. SMITH: No objection, Your Honor.

6 THE COURT: It will be admitted.

7 (Government Exhibit No. 3 admitted into evidence.)

8 BY MR. BURSON: (Continuing)

09:45:48 9 Q So I'd like to talk about the procedure that you went  
10 through with JV.

11 Before you started administering the lineups, did you tell  
12 him anything about the lineups that you were getting ready to  
13 administer or the pictures that he was getting ready to review?

09:46:12 14 A So we read the -- that form verbatim, um, and then I  
15 believe there was a short discussion afterwards of -- you know,  
16 in my memory, one thing for sure we told him was, you know,  
17 don't tell your family whether you picked anyone or not. Don't  
18 discuss what you did or didn't do when we showed you the lineup,  
19 with your family.

09:46:28 20 Q Okay. And you gave JV that instruction prior to beginning  
21 the lineup?

22 A Yes. We gave that to all of his -- all of JV's family.

23 Q Okay. And so when you talk about Exhibit 3 --

24 MR. BURSON: Could we pop that up? Thank you.

25

1 BY MR. BURSON: (Continuing)

2 Q When you talk about Exhibit 3, you said you read these  
3 instructions verbatim.

4 Are you referring to the instructions here, where I'm  
09:46:57 5 indicating, marked as 1 through 6?

6 A Yes.

7 Q Okay. And then I assume this introductory line here  
8 (indicating).

9 A Yes.

09:47:06 10 Q Okay. As best as you recall, did JV have any questions  
11 about those instructions?

12 A No.

13 Q And did he review the document before he signed it where  
14 you indicated he did earlier?

09:47:19 15 A Yes.

16 Q Okay. And just for clarity purposes, Agent Ribail, the  
17 lineups that you generated, as we saw earlier, and, again, those  
18 are Exhibits 4 and 5 that we're going to be talking about, the  
19 first page of those is a cover sheet with some identifying  
09:47:56 20 information about the individuals pictured.

21 Was that included with the photos while you conducted the  
22 lineup with JV?

23 A No.

24 Q So that was removed beforehand?

09:48:08 25 A Yes.

1 Q Okay. So now let's talk about the actual administrative --  
2 the actual administration of the lineup following the execution  
3 of that cover sheet marked as Exhibit 3 or admitted as  
4 Exhibit 3.

09:48:23 5 Did you use the same procedure for each of these -- well,  
6 for all of the lineups that you administered with them?

7 A Yes.

8 Q Okay. Can you walk us through -- first of all, where did  
9 this lineup take place?

09:48:39 10 A It was in JV's driveway at his residence.

11 Q Okay. So the two of you were standing in the driveway?

12 A Yes, with -- with Detective Cypher.

13 Q Okay. And as you were administering this lineup with JV,  
14 where was rest of his family?

09:48:56 15 A Inside the residence, I believe, but not -- not around us  
16 or, you know, within -- I couldn't see them, so ...

17 Q Okay. Other than you, Detective Cypher, and JV, was anyone  
18 else in the driveway?

19 A No.

09:49:12 20 Q Okay. And now can you walk us through how you actually  
21 administered this lineup?

22 A So I -- I would take a packet, and then based on my notes,  
23 I believe we started with, you know, No. 5035. I would make  
24 sure that the name list was gone, so either put it in my folder  
09:49:34 25 or put it under the other remaining lineups. And then I would

1 hand them to him, and we're actually on the hood of a car. So  
2 hand him -- they're upside down. You know, I would hand him the  
3 first photo, he would review it, and then hand it back, and we  
4 would repeat. And I'm handing them in such a way -- they're  
09:49:54 5 upside down -- so that I'm not really -- I can't see them, you  
6 know, either, as I'm handing them.

7 Q Okay. So the stack of photos would be on the hood of the  
8 truck?

9 A Car, yes.

09:50:04 10 Q Hood of the car.

11 Did you hand him the photos one by one?

12 A Yes.

13 Q Okay. So you would hand him one photo.

14 Would you hand him another photo while he's still looking  
09:50:16 15 at that, or would you wait until he gave the photo back to you  
16 before handing him another photo?

17 A Would wait for him to, yes, hand it back after -- most  
18 people say "no" or something like that. So he would say "no,"  
19 and then he -- I would take it back and then hand him the next  
09:50:32 20 one, and then after he had enough time to review it, I would  
21 take it back and then hand him another one.

22 Q Okay. And, now, I know the photos were upside down on the  
23 hood of the car, and you just testified that you made an effort  
24 not to see which photo it was as you handed it to him.

09:50:54 25 What about when he handed it back to you? Would you make



1 the same effort to not view the photo he had just handed back?

2 A I think generally. I think it's harder when somebody is in  
3 control, so I probably did see them. But, yes, I did my best to  
4 not be involved in knowing what he was looking at.

09:51:12

5 Q Okay. And as you recall, by the time you took the photo  
6 back in each instance, he had already indicated a "yes" or a  
7 "no," as far as identification goes?

8 A Yes.

09:51:30

9 Q Okay. What about the order in which the photos were laying  
10 facedown on the vehicle? Did you know what order they were in?

11 A It's a tough question. I think the answer is "yes" and  
12 "no." Um, I would say yes, I knew -- I know what order they  
13 were in, because we kept them in the same order as they are in  
14 the lineup, as they were generated, the list. Um, but because  
15 there were so many lineups, I couldn't memorize which lineup was  
16 which. So, you know, in this case we started with 5035. Um, I  
17 had -- I did not memorize all four lineups where suspects, what  
18 number they were in each, I guess, if that makes sense.

09:51:53

19 Q So as you were handing photos to JV, and you weren't able  
20 to see the photo, did you know which photo it was as you handed  
21 it to him?

09:52:22

22 A I guess generally I'd know this is the first photo, the  
23 second photo, and so on, yes.

24 Q But did you know whether it was a filler photo or a suspect  
25 photo?

09:52:36

1 A No.

2 Q So looking back at Exhibit 3, there are some markings down  
3 here, and we'll start with the four-digit numbers; each of them  
4 begins with a 5.

09:53:02 5 What are those numbers referring to?

6 A That's the unique number that Spillman gives the photo  
7 lineup when you're done and save it.

8 Q Okay. And -- and who was it that was making these notes  
9 here?

09:53:14 10 A Myself.

11 Q All right. And so judging by the fact that there's --  
12 there are four lineups administered, there's four unique  
13 identifying numbers on here -- 5032, 5033, 5034, 5035 -- this  
14 cover sheet was used to record, by you, the results of the  
09:53:38 15 lineups for all of the lineups consolidated, right?

16 A Correct.

17 Q Okay. I'd like to show you again Exhibit No. 5.

18 We've been talking about unique identifying number. This  
19 5033 on the cover sheet of the lineup, and also in the upper  
09:54:13 20 left-hand corner of the -- each individual picture, is that the  
21 unique identifier, same unique identifier that is indicated as  
22 5033 on Government Exhibit 3?

23 A Yes.

24 Q And going back to Exhibit 4, this unique identifier, 5032,  
09:54:50 25 is that the same 5032 that's on the cover sheet?

1 A Yes.

2 Q Okay. So let's talk about Exhibit 4.

3 You testified earlier that this was a lineup including a  
4 photo of Donovan Cloud, correct?

09:55:05 5 A Yes.

6 Q All right. And was this -- and, again, you testified this  
7 is one of the lineups that you showed to JV on that day.

8 A Yes.

9 Q All right. And when you administered this lineup to him,  
09:55:21 10 did you use the same single-blinded procedure you described  
11 earlier?

12 A Yes.

13 Q Do you recall if, when you handed him any pictures in this  
14 lineup one at a time, whether he indicated that he recognized  
09:55:38 15 any of these individuals in this lineup as the individuals who  
16 had visited his house that day, you know, held his son at  
17 gunpoint, et cetera?

18 A Yes, he did.

19 Q Okay. Do you recall -- well, let's just look at the notes  
09:55:54 20 you made, shall we?

21 Showing again Government Exhibit 3. There's a "5032" here.

22 Is that referring -- again, referring to the "5032" on  
23 Exhibit 4?

24 A Yes.

09:56:10 25 Q Can you read the note next to "5032"?

1 A Yes. It says (reading): Looks like guy had pistol to  
2 son's head, facial hair, height, hair, teared up almost instant.

3 Q Okay. And as you recall it, that description, that looks  
4 like the guy that had gun to son's head and -- is that an  
09:56:44 5 accurate statement of what he said about this particular  
6 individual?

7 A Yes. That's me taking notes as he's describing why he  
8 believes that is one of the -- that that's the person with the  
9 pistol at his son's head.

09:57:00 10 Q Okay. Do you recall, when you handed him that picture, any  
11 time delay between him looking at the picture and him making  
12 that comment?

13 A No. He teared up -- that's why I noted it that way -- up  
14 almost instantly. I mean, he took the picture, and you could  
09:57:19 15 just see his face change.

16 Q Okay. So that comment there, teared up instantly, does  
17 that accurately reflect what you observed happened when he  
18 viewed the picture that you had handed him?

19 A Yes.

09:57:39 20 Q Okay. And "5032" with a "6" next to it, what does that  
21 note indicate?

22 A That's me noting which picture he identified.

23 Q And by "5032-6," showing Government Exhibit 4, last page --  
24 Page 6 is labeled 7, is this the photo that you're referring to  
09:58:13 25 when you made that note --

1 A Yes.

2 Q -- that he instantly teared up upon seeing --

3 A Yes.

4 MR. SMITH: Your Honor, I'm going to object. The  
09:58:22 5 attorney is misstating what the officer's notes reflect. He  
6 keeps -- he keeps referring to it as "teared up instantly," when  
7 the officer's notes reflect that -- there's another word there,  
8 and I don't want to -- to make a record that's incorrect.

9 MR. BURSON: I'll rephrase, Your Honor.

09:58:39 10 THE COURT: Go ahead.

11 BY MR. BURSON: (Continuing)

12 Q Is this the picture that JV, as you recall and made a note,  
13 quote, according to your note, "teared up almost instantly"?

14 A Yes.

09:58:54 15 Q Okay. Going back to Exhibit 5, lineup 5033, as indicated  
16 on each page on the upper left-hand corner, you testified  
17 earlier this is a lineup that included James Dean Cloud,  
18 correct?

19 A Correct.

09:59:25 20 Q Okay. And this lineup, did you use the same single-blinded  
21 administration technique that you described for us earlier?

22 A Yes.

23 Q Okay. And as you handed these photos to JV, did he pause  
24 at any of them to indicate that he recognized any individuals?

09:59:47 25 A No.

1 Q Okay. So he made no identification for this?

2 A Correct.

3 Q And, indeed, Government Exhibit 3, next to "5033" indicates  
4 none.

10:00:06 5 Is that right?

6 A No identification, correct.

7 Q Okay. Now, you administered lineups to his wife and his  
8 son that day as well, correct?

9 A I -- yes.

10:00:26 10 Q They made no identification?

11 A Correct.

12 Q After you administered the lineups that day at JV's  
13 residence with JV and his family, did you depart the residence?

14 A Yes.

10:00:45 15 Q Where did you go?

16 A I don't remember exactly where we went next, but later -- I  
17 know later in that day we, um, administered a lineup with LL,  
18 and we also ended up back on JV's property later that day as  
19 well.

10:01:02 20 Q Okay. So I want to focus on the ending up back at JV's  
21 property.

22 How did you end up -- I should say, why did you end up back  
23 on JV's property?

24 A Based on the investigation at that point, we believed that  
10:01:17 25 there might be some other evidence out in one of their fields,

1 so we wanted to go take a look.

2 Q Okay. And so you were -- you actually were on JV's  
3 property?

4 A Yes.

10:01:28 5 Q And do you remember approximate time of day?

6 A I would guess 6:00 or 7:00 at night.

7 Q When you were on JV's property, did you make contact with  
8 JV?

9 A We did.

10:01:46 10 Q Okay. How did that come about?

11 A We were -- I think we were driving through -- to get on his  
12 property, which is kind of a farm, we had to drive through part  
13 of the driveway. And as we were driving through the driveway, I  
14 think on the way in -- could have been on the way out, but I  
10:02:04 15 think on the way in, he -- I picture him kind of like running,  
16 kind of shaking his hands, so we stopped to see what he wanted.

17 Q Okay. And what -- and what did he want?

18 A Uh, he wanted to talk to us because he had seen pictures on  
19 the Internet of who he thought were the suspects.

10:02:23 20 Q Okay. And did he make any statements about those photos  
21 that he'd seen on the Internet?

22 A He did. He said that, uh, the photos that he saw on the  
23 Internet he was 100 percent sure were the two individuals that  
24 carjacked him and his family the previous day.

10:02:42 25 Q Okay. And you just used the phrase "100 percent sure."

1 Are those his words or yours?

2 A His words.

3 Q Verbatim?

4 A Yes. I didn't even ask. He said, "100 percent." And he  
10:02:55 5 was kind of mad.

6 Q Okay. And you said you didn't ask. You didn't ask for a  
7 degree of certainty. He volunteered 100 percent?

8 A Correct.

9 Q Okay. So you said he was kind of mad.

10:03:05 10 Why would he be -- did he indicate why he was mad?

11 A He did. He said, "Why couldn't you use those photos?" And  
12 I hadn't seen the photos that he had seen at that point, but,  
13 um, he was sort of describing that, you know, one of them was  
14 like a Facebook picture, I think he said like a guy, you know,  
10:03:23 15 flexing his muscles in front of a waterfall or --

16 MR. SMITH: Your Honor, I'm sorry, I can't hear the  
17 witness' testimony.

18 THE COURT: Okay.

19 MR. SMITH: If you could bring it a little closer and  
10:03:32 20 speak up.

21 THE COURT: Sure.

22 Could you repeat your last answer.

23 MR. SMITH: Please.

24 THE WITNESS: I don't remember where I was at. Um --

25



1 BY MR. BURSON: (Continuing)

2 Q You were just saying that he indicated that at least one of  
3 them was a Facebook photo.

4 A Yes. He kind of described the photos; that one he  
10:03:48 5 described, in my memory, as being kind of like a Facebook photo,  
6 um, of a guy like posing in front of a waterfall. His point was  
7 that these were new, fresh, you know, pictures. It looked like  
8 the two people that were there.

9 Q Okay. Now, he didn't show you the pictures that day, I  
10:04:18 10 believe you just indicated.

11 A No.

12 Q All right. At some point thereafter were you able to see  
13 what pictures he was referring to that he had -- he had seen and  
14 was, quote, 100 percent certain that those -- those were the  
10:04:32 15 suspects?

16 A Yes. He provided them to us at a later date.

17 Q Okay. How did he provide them to you?

18 A Uh, he sent them in a text message.

19 Q All right. Showing you what has been marked as Government  
10:04:55 20 Exhibit 8, albeit very small at the bottom.

21 Do you recognize this photo?

22 A Yes, that's -- that's what he provided to me.

23 Q Okay. When you say -- this appears to be like a text  
24 message string.

10:05:09 25 Is that right?

1 A Correct.

2 Q Okay. So when you say he provided it to you, you mean he  
3 sent you a text?

4 A Yes.

10:05:17 5 Q Okay. And so this is an exchange between you and JV; is  
6 that right?

7 A That's correct.

8 Q Okay. And is this like a screen-shot of your phone?

9 A Yes.

10:05:29 10 Q Okay. And -- and so this would be you asking for a web  
11 page link?

12 A Yes.

13 Q Okay. And is this the -- did he indicate that this is the  
14 photo that he had seen online?

10:05:43 15 A Yes.

16 Q All right. He didn't provide a name, correct?

17 A This is all he provided, yes. Correct.

18 Q Okay. And what I mean is he didn't provide a name of "This  
19 person named X, this is his picture"?

10:05:57 20 A Not -- not that I recall, no.

21 Q Okay. Do you know now who this -- who the individual  
22 pictured in this photo is?

23 A Yes.

24 Q Could you tell us?

10:06:06 25 A It's Donovan Cloud.

1 Q Okay. And JV had already indicated that a photo of Donovan  
2 Cloud in the lineup was the person who held a gun to his son's  
3 head, correct?

4 A Yes.

10:06:23 5 Q Okay. Now, he also sent you this link here.  
6 Do you recall what that link is to, as best as you recall?

7 A Yes. It's I think it's called Yakima Scan. I can't  
8 remember if it's attached -- I mean, it's attached to Facebook,  
9 but it's a local place where people -- you can get on there and,  
10:06:48 10 you know, say, "My neighbor's house is on fire" or "the police  
11 are at this address." It's just a way to report crime and --  
12 and fires and other dangerous situations, I guess.

13 MR. BURSON: Okay. Your Honor, Government moves to  
14 admit Exhibit 8.

10:07:03 15 MR. SMITH: No objection, Your Honor.

16 MR. McENTIRE: And no objection from James Cloud.

17 THE COURT: It will be admitted.

18 (Government Exhibit No. 8 admitted into evidence.)

19 BY MR. BURSON: (Continuing)

10:07:35 20 Q Showing you what's marked as Government Exhibit 7.

21 Is this -- is this the photo that JV had sent you a link  
22 to?

23 A No.

24 Q So --

10:07:51 25 A That's not the link. That's --

1 Q Sorry. Okay. Is this a reproduction of the photo that JV  
2 had sent you a link to?

3 A Yes.

4 Q Okay. But it was on something called Yakima Scan, I  
10:08:05 5 believe you testified to.

6 A Scan and/or the Yakama Nation website.

7 Q Okay. Are you familiar with this image here?

8 A Yes.

9 Q Including, you know, the -- the information up top, the  
10:08:18 10 imagery?

11 A Yes.

12 Q Okay. And so where does this come from?

13 A Uh, the Yakama Nation Tribal Police put this bulletin out.

14 Q Okay. Now, this is a photo of James Cloud, correct?

10:08:35 15 A Correct.

16 Q Your understanding is this is the photo that JV saw  
17 sometime prior to him coming out and flagging you down?

18 A Yes.

19 Q This was the photo that he was referring to, it's your  
10:08:45 20 understanding, when he said, "Why didn't you guys use these  
21 photos"?

22 A Yes.

23 Q This is one of them.

24 A That's correct.

10:08:51 25 Q Okay. And when he said he was 100 percent certain that

1 these were the guys, your understanding is these were one of the  
2 guys that he was referring to?

3 A Yes.

4 Q Okay. So have you become familiar with the origins of  
10:09:06 5 this -- well, first, you've viewed this, right, online?

6 A Yes.

7 Q Okay. In and around the time that JV provided you the  
8 information?

9 A Yes.

10:09:16 10 Q And it's substantially in the same form as it was when you  
11 viewed it?

12 A Yes.

13 Q Okay. And, again, you viewed this on the Yakama Nation's  
14 Facebook page?

10:09:26 15 A Yes.

16 MR. BURSON: Okay. Your Honor, move to admit Government  
17 Exhibit 7.

18 THE COURT: Any objection?

19 MR. McENTIRE: The question was whether or not he viewed  
10:09:36 20 it under the Yakama Nation's Facebook page, and I think it was  
21 viewed on the Yakama Tribal Police. I just want to clarify  
22 that.

23 BY MR. BURSON: (Continuing)

24 Q Where did you originally view this?

10:09:48 25 A I saw it in multiple places, so I don't know which place I

1 saw it initially.

2 Q Okay.

3 A I think this reproduction we actually got from either  
4 Tribal directly or from their website.

10:10:00 5 Q Okay. But you obtained this from one of those sources?

6 A Yes.

7 Q Okay. Is it in substantially the same form as it was when  
8 you obtained it --

9 A Yes.

10:10:07 10 Q -- from one of those sources?

11 A Yes.

12 MR. McENTIRE: No objection from James Cloud.

13 MR. SMITH: No objection, Your Honor.

14 THE COURT: It will be admitted.

10:10:13 15 (Government Exhibit No. 7 admitted into evidence.)

16 BY MR. BURSON: (Continuing)

17 Q So I want to talk about this Facebook posting for a bit.

18 You know, it says (reading): One suspect remains at large  
19 in reservation murders.

10:10:28 20 Your understanding is that's referring to the murders that  
21 we've been discussing, correct?

22 A Correct.

23 Q All right. And I just want to clarify one point: At this  
24 point in time, did the investigation indicated [sic] that the

10:10:39 25 same people who were suspected of these reservation murders that

1 had occurred the day before this was posted, were they the same  
2 suspects in the events at JV's residence that we've been talking  
3 about?

4 A At this point that's what we believed, yes.

10:10:57 5 Q Okay. Still believe that?

6 A Yes.

7 Q So -- and what was that based on?

8 A I think generally it was based on a vehicle was taken from  
9 where -- from John Cagle's residence, and that vehicle was near  
10:11:17 10 this -- near JV's residence. And, you know, there were four  
11 occupants at one point, and then two got picked up and the other  
12 two didn't, so kind of narrowed down which two likely ended up  
13 at JV's residence.

14 Q Okay. And is there other -- as we stand here today, is  
10:11:35 15 there other evidence to corroborate that the same individuals  
16 were involved in both incidents that you haven't detailed today  
17 and --

18 A Yes.

19 Q -- are the subject of another hearing?

10:11:44 20 A Yes.

21 Q Okay. So this post, that appears it was posted June 9th at  
22 5:12 p.m., indicates that one suspect remains at large in the  
23 reservation murders.

24 Was that your understanding as well, that there was one  
10:12:04 25 subject at large?

1 A Yes.

2 Q Okay. And based on your investigation up to that point,  
3 one of those suspects was James Cloud, the individual pictured  
4 here --

10:12:13

5 A Yes.

6 Q -- correct?

7 Okay. And so that's an accurate statement: June 9th,  
8 2019, 5:12 p.m., one suspect remained at large, and it was the  
9 individual pictured here.

10:12:23

10 Correct?

11 A Yes.

12 Q And actually named in the -- in the post.

13 A Yes.

14 Q Okay. I'd like to show you another posting with the header  
15 "Yakama Nation Info."

10:12:47

16 Are you familiar with this image here?

17 A Yes.

18 Q Did you obtain this image as well?

19 A The FBI did, yes.

10:12:55

20 Q Okay. And where was it obtained from?

21 THE COURT: What exhibit number, Counsel?

22 MR. BURSON: This is marked as Government Exhibit No. 6,  
23 Your Honor.

24 THE COURT: Thank you.

25



1 BY MR. BURSON: (Continuing)

2 Q Are you familiar with this image?

3 A Yes.

4 Q Okay. Do you know where it came from?

10:13:08 5 A The Yakama -- Yakama Tribal Police.

6 Q Okay. And so was this -- and in substantially the same  
7 form as it was when you originally viewed it after it was  
8 obtained by another agent?

9 A Yes.

10:13:24 10 Q And your understanding is it's also a Facebook post?

11 A Yes.

12 MR. BURSON: Okay. Move to admit Government Exhibit 6.

13 THE COURT: Any objection?

14 MR. McENTIRE: No objection from James Cloud.

10:13:36 15 MR. SMITH: No objection, Your Honor.

16 THE COURT: It will be admitted.

17 (Government Exhibit No. 6 admitted into evidence.)

18 BY MR. BURSON: (Continuing)

19 Q So this post indicates that it was put up on the Facebook  
10:13:43 20 account on June 9th, 2019, at 3:19 p.m.

21 You'd agree with that, right?

22 A Yes.

23 Q That's two hours prior to this post in Exhibit 7 saying  
24 that one suspect is at large.

10:14:02 25 A Yes.

1 Q And even though it's two hours prior, this one says all  
2 suspects connected to five murders have been apprehended.

3 A That's correct.

4 Q Okay. So you would agree the later post, in Exhibit 7,  
10:14:17 5 indicating one suspect, James Cloud, pictured here is at large,  
6 is a correction of this earlier post saying that all suspects  
7 are -- have been captured.

8 A Yes.

9 Q Okay. Did you do any investigation or did a co-agent do  
10:14:37 10 any investigation, that you've spoken with on this matter, do  
11 any looking into exactly how that happens, that the Yakama  
12 Nation posted all suspects in custody at 3:00 p.m. and then two  
13 hours later another post saying, actually, that's not the case;  
14 there's one suspect at large?

10:15:00 15 A Yes.

16 Q Could you briefly describe how it is that that happened.

17 A Yes. Generally, Oregon State Police arrested Donovan Cloud  
18 and there were a couple other people in the car or in the area,  
19 and I think when that information was relayed to law enforcement  
10:15:18 20 up here, you know, through Tribal, through Sheriff's Office,  
21 through us, somehow it got twisted that there were two people in  
22 custody. And I think, uh, somebody told Tribal, or they made  
23 the leap themselves, that because two people -- two people,  
24 including Donovan Cloud, were in custody, that they both were in  
10:15:38 25 custody.

1 Q Okay.

2 A And then they released this memo.

3 Q So Oregon State Police had apprehended Donovan Cloud --

4 THE COURT: Counsel, let me stop you here.

10:15:50

5 This is normally the time when we take our morning  
6 recess when we're in trial, so we're going to follow a normal  
7 trial schedule. We'll take a 15-minute recess at this time,  
8 give the witness and everyone an opportunity to take a little  
9 break.

10:16:12

10 One thing I failed to mention, and I want to make sure  
11 that the record is, in fact, also clear on this: Mr. -- Messrs.  
12 Cloud, your attorneys are seated in a socially distant way,  
13 approximately at least 6 feet from you. However, if you need to  
14 communicate with them at any point, you can do so at any point.  
15 If there's something that is -- you cannot hear, it is mumbled  
16 because of a person wearing facemasks or whatever, let me know,  
17 and I will make sure that whatever is not understood by you is  
18 repeated.

10:16:36

19 Is that clear? First with Mr. James Cloud?

10:16:56

20 DEFENDANT JAMES CLOUD: Yes. Yes.

21 THE COURT: Mr. Donovan Cloud?

22 DEFENDANT DONOVAN CLOUD: Yes.

10:17:07

23 THE COURT: And, also, have you had an opportunity to  
24 communicate with your lawyers, if you wished to do so, during  
25 the hearing this morning? If you wished to do so, did you have

1 an opportunity to communicate with them during this hearing?

2 DEFENDANT DONOVAN CLOUD: No. Yeah. No.

3 THE COURT: Okay. Well, it's not a trick question.

4 Okay? Let me start with Mr. James Cloud.

10:17:27 5 During this hearing, did you have an opportunity to, if you  
6 wanted to, not to say that you were compelled to, but if you  
7 wanted to talk to your attorney, did you have an opportunity to  
8 do so if you wanted to?

9 DEFENDANT JAMES CLOUD: Yeah, briefly. But, um --

10:17:43 10 THE COURT: I can't hear you.

11 DEFENDANT JAMES CLOUD: I said yeah, briefly, when I  
12 first got here. But like I just got a big stack of papers to  
13 review yesterday, and we don't actually got --

14 THE COURT: Okay.

10:17:59 15 THE REPORTER: I'm sorry?

16 DEFENDANT JAMES CLOUD: I got a bunch of copies of  
17 motions --

18 THE COURT: Sure.

19 DEFENDANT JAMES CLOUD: -- well over 100 pages.

10:18:04 20 THE COURT: Sure.

21 DEFENDANT JAMES CLOUD: We can't -- we want to take part  
22 in our own defense. We don't get actually all of that here.

23 THE COURT: Okay. And that is the subject of probably  
24 another motion that is going to come to me, but I appreciate you  
10:18:19 25 telling me that. But just with regards to this hearing, have

1 you had an opportunity to talk to your attorney during the  
2 course of this hearing, if you wanted to?

3 DEFENDANT JAMES CLOUD: Um, well, yeah, right here in  
4 the courtroom.

10:18:32 5 THE COURT: Okay. That's all I'm asking. Thank you,  
6 sir.

7 Sir, with regards to you?

8 DEFENDANT DONOVAN CLOUD: Yeah.

9 THE COURT: You have?

10:18:40 10 DEFENDANT DONOVAN CLOUD: Yes.

11 THE COURT: All right. Okay. And, again, feel free  
12 that you are able to talk to your attorneys. If we need to stop  
13 this proceeding in order for you to do that, know that you can.

14 Is that clear to you? Sir, first to you, Mr. James  
10:18:54 15 Cloud.

16 THE DEFENDANT JAMES CLOUD: Yes. Thank you.

17 THE COURT: Mr. Donovan Cloud?

18 DEFENDANT DONOVAN CLOUD: Yes.

19 THE COURT: All right. We'll take a short recess at  
10:19:00 20 this time. Thank you.

21 THE COURTROOM DEPUTY: All rise. Court is in recess.

22 (Recess taken: 10:19 a.m. to 10:34 a.m.)

23 THE COURTROOM DEPUTY: All rise.

24 (Call to Order of the Court.)

10:35:11 25 THE COURT: Please be seated.

1 Mr. Burson, you can continue.

2 MR. BURSON: Thank you, Your Honor.

3 BY MR. BURSON: (Continuing)

10:35:47 4 Q So, Agent Ribail, just to get us back on track here, we  
5 were talking about these two Facebook posts by Yakama Nation,  
6 right?

7 A Yes.

10:36:10 8 Q And we were discussing the fact that two hours before they  
9 posted -- posted a picture of James Cloud saying one suspect at  
10 large still, they had posted a posting saying that all suspects  
11 were in custody.

12 A Yes.

10:36:24 13 Q And I believe you testified that that was basically the  
14 result of some miscommunication between Oregon State Police  
15 and -- what was the other -- what's the entity that posts -- is  
16 responsible for this posting, as you know?

17 A Yakama Nation.

18 Q Okay. Yakama Tribal Police or Yakama Nation?

10:36:43 19 A They're one in the same, but I think Yakama Nation Tribal  
20 Police ultimately were the ones that either asked to have this  
21 posted or posted it directly.

22 Q Okay. And that was because they had heard from Oregon  
23 State Police that two people were in custody, correct?

10:36:58 24 A Yes, but -- there could have been a middle agency in  
25 between, but, generally yes.

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1 Q Okay.

2 A Yes.

3 Q Are you familiar with the phrase "game of telephone"?

4 A Yes.

10:37:03 5 Q Okay. Is it your understanding that is what occurred here?

6 There was a game of telephone, and two suspects in custody  
7 became these two suspects in custody?

8 A Correct.

9 Q Okay. And is it your understanding that at some point in  
10:37:18 10 time, within two hours, I suppose, the Yakama Nation became  
11 aware that their earlier posting was incorrect?

12 A Yes.

13 Q And this subsequent posting, indicating that James Cloud  
14 was still at large, was that issued to correct the prior  
10:37:38 15 posting?

16 A Yes.

17 Q Okay. And you -- you -- who is the other agent working  
18 with you closely on this?

19 A Uh, Special Agent Jennifer Terami.

10:37:48 20 Q Okay. And one or both of you has had conversations with  
21 Yakama Nation about this Facebook posting?

22 A Yes.

23 Q Okay. And you've discussed it amongst each other.

24 A Yes.

10:37:56 25 Q Okay. And so is it your understanding -- well, let me ask

1 you, where this post says "due to misidentification," what is  
2 your understanding of what is being referred to?

3 A The fact that they believed they were both in custody, and  
4 then they later learned that only one was.

10:38:13 5 Q Okay. So we touched briefly earlier on FBI policy at the  
6 beginning of your testimony.

7 And, again, at the time that you were conducting the  
8 lineups that we've been discussing, you were operating under FBI  
9 policy guidance issued in November of 2013 --

10:38:54 10 A Correct.

11 Q -- is that right?

12 And you testified you're familiar with that policy.

13 A Yes.

14 Q Okay. And we also talked earlier about the procedure that  
10:39:03 15 you went through with JV's lineup, as well as other lineups, and  
16 another lineup that we haven't talked about yet.

17 Is it your understanding that those lineups were conducted  
18 in compliance with the FBI November 2013 policy guidance?

19 A Yes.

10:39:25 20 Q Okay. And so based on the policy guidance, you would  
21 agree -- right? -- the policy guidance requires you to include  
22 only one suspect per photo lineup?

23 A Yes.

24 Q Did you do that?

10:39:44 25 A Yes.



1 Q It requires you to use a minimum of five filler  
2 photographs.

3 Did you do that?

4 A Yes.

10:39:49 5 Q It requires you to use fillers that are similar in  
6 appearance to not only themselves but to the suspect that's  
7 included.

8 A Yes.

9 Q Did you do that?

10:40:01 10 A Yes.

11 Q Okay. Now, you're aware that it says that you should  
12 request the witness not to have any contacts with the media,  
13 correct?

14 A Yes.

10:40:13 15 Q Okay. So focusing on -- on the lineup administered to JV  
16 and the instructions you gave him before and after the lineup,  
17 if any, you testified earlier that you told him not to discuss  
18 it with his family, correct, the lineup?

19 A Correct.

10:40:31 20 Q Okay. Did you tell him not to contact any media?

21 A No.

22 Q And why not?

23 A I think generally I sort of forgot. I also felt like he  
24 was not the type of person that was going to go do interviews  
10:40:48 25 with the media.

1 Q Okay. And is that your understanding of what the policy  
2 means when it says "contact the media," actually go do  
3 interviews and -- and things of that nature?

4 A Absolutely.

10:40:59 5 Q Okay. And this policy, as written by the FBI, this is to  
6 provide guidance to agents, correct?

7 A Yes.

8 Q Not lawyers?

9 A Correct.

10:41:14 10 Q And so I want to kind of get your understanding, as an FBI  
11 agent governed by this policy, what that means, "contact the  
12 media."

13 Do you have a smartphone?

14 A Yes.

10:41:28 15 Q You're an FBI agent. I assume you're probably not very  
16 active on social media.

17 A I am not.

18 Q Okay. But do you look at the news?

19 A Every day, yes.

10:41:37 20 Q Okay. Through a web browser on your smartphone?

21 A Yes.

22 Q Did you do it this morning?

23 A Yes.

24 Q Did you have any contact with media in the last 24 hours?

10:41:47 25 A No.

1 Q Okay. And because, as you understand it, "contact" means  
2 engage with, speak to; things of that --

3 A Yes.

4 Q -- nature? Okay.

10:41:58 5 So you didn't tell JV to not -- to -- you didn't request  
6 that he not contact media.

7 First of all, is it your understanding from the policy that  
8 you can only request?

9 A Yes.

10:42:11 10 Q You can't, like, tell them not to, correct --

11 A That's correct.

12 Q -- the same way you can tell them, "Don't speak to other  
13 witnesses"?

14 A Yes.

10:42:19 15 Q Okay. You're aware that JV saw these Facebook posts that  
16 we've been talking about.

17 A Yes.

18 Q Okay. Given that, are you aware of JV having contact with  
19 media, as you understand it?

10:42:40 20 A No.

21 Q Okay. Moving on to some other guidance that's included in  
22 the FBI policy regarding instructing the witness, other than the  
23 contacting the media thing, it says, you know, you're supposed  
24 to inform them that they're going to be asked to view a series  
10:42:59 25 of photographs.

1 Did you tell JV that?

2 A Yes.

3 Q It also requires or advises that you should inform them  
4 that it's just as important to clear innocent people from  
10:43:10 5 suspicion as it is to identify guilty people.

6 Did you inform JV of that?

7 A Yes. And, I'm sorry, I'm trying to remember the -- you  
8 know, we read the sheriff's form, so it's a little different  
9 than our policy, but yes.

10:43:22 10 Q Okay. So when you say that you read the sheriff's form,  
11 your referring to Government Exhibit 3?

12 A Correct.

13 Q Okay. So you read this verbatim, 1 through 5.

14 A Yes.

10:43:35 15 Q Okay. And I believe one of those advisals is it's just as  
16 important to eliminate innocent persons as it is to identify  
17 those persons responsible.

18 A Yes.

19 Q The policy also advises that you should tell the individual  
10:43:55 20 that the person who committed the crime may or may not be in the  
21 lineup.

22 Did you inform JV of that, either through a written  
23 document or verbatim?

24 A Yes.

10:44:04 25 Q Okay. Now, it also requires you to ask how certain an

1 identification is, correct?

2 A Correct.

3 Q Now, with the lineup of Donovan Cloud, he made an  
4 identification, as you recall; is that right?

10:44:19 5 A Yes.

6 Q And we've seen the indications on Government Exhibit 3.

7 Did you indicate, when you took your notes on Government  
8 Exhibit 3 -- and I'll put them back up here so you can see  
9 them -- did you indicate on there, when he identified someone in  
10 lineup 5032, which we've already discussed, which is the one  
11 that included defendant Donovan Cloud, did you indicate what his  
12 level of certainty was with respect to that identification?

10:44:40 10

13 A In my opinion, yes.

14 Q Okay. In your -- and how did you make that indication?

10:45:03 15 A The -- him tearing up almost instantly, and just talking to  
16 him afterwards, I didn't -- I had no doubt that he was certain  
17 that that was, uh, Donovan Cloud.

18 Q Okay. And so why make that indication, that he teared up  
19 almost immediately? Why -- why include that note there? Why  
20 not just say, "Yes. Guy who held a gun to my son's head"?

10:45:30 20

21 A Well, it was very notable. I mean, when we do interviews,  
22 people have different reactions, and it was a very unique  
23 reaction.

24 Q How many -- how many victim witness interviews do you think  
25 you've conducted over the past 17 years?

10:45:48 25

1 A At least 100, probably.

2 Q Okay. In your opinion, when a witness sees something in a  
3 lineup, sees an individual in a lineup and you've observed them  
4 tearing up almost instantly, as you put it, is that an  
10:46:09 5 indication of certainty, in your mind?

6 MR. SMITH: Objection, Your Honor; lack of foundation.  
7 He hasn't been qualified as an expert on emotional responses or  
8 what it means.

9 THE COURT: Sustained.

10:46:21 10 MR. BURSON: Could I be heard on that, Your Honor?

11 THE COURT: Have I heard of what?

12 MR. BURSON: Can I be heard on that?

13 THE COURT: You can, yes.

14 MR. BURSON: I understand that. I'm asking --

10:46:29 15 THE COURT: Counsel, I know what you're asking. If you  
16 could ask it a different way, you might be able to get the  
17 answer that I think you're trying to get. So go ahead. But you  
18 can be --

19 BY MR. BURSON: (Continuing)

10:46:39 20 Q Agent Ribail --

21 THE COURT: -- heard on that.

22 MR. BURSON: Sorry, Your Honor, I didn't mean to  
23 interrupt.

24 THE COURT: No, that's okay.  
25

1 BY MR. BURSON: (Continuing)

2 Q Agent Ribail, when you indicated on there that the witness  
3 had teared up almost instantly, were you doing -- was your  
4 intent to record a level of certainty?

10:46:56 5 A Yes.

6 Q Thank you.

7 Now, since -- since the lineup was administered, and we  
8 spoke earlier about the FBI policy that was published or --  
9 published on June 9th, 2019, the same day the lineup was  
10 administered with JV, have you become familiar with that policy?

10:47:30 10

11 A Yes.

12 Q But it was sometime subsequent to the administration of the  
13 lineup?

14 A Yes.

10:47:41 15 Q Okay. Now, does that policy suggest that you, when  
16 practicable, audio and video record lineups?

17 A Yes, it does.

18 Q Okay. The policy that you were operating under, as you  
19 testified, does that one require audio and video recording?

10:48:03 20 A No. And the new one does not require it.

21 Q Okay. It doesn't require it.

22 What does it -- what does it say about it?

23 A It says it should be considered.

24 Q Okay. All right. Did you consider using audio or video  
10:48:15 25 equipment?

1 A I would say "no."

2 Q Okay. Other than the fact that that policy that you were  
3 operating under didn't require you to consider or suggest that  
4 you consider audio and video recording, is there any reason that  
10:48:32 5 you would have considered it?

6 A I'm sorry. I don't -- I don't think I understand the  
7 question.

8 Q Let me ask it this way: Setting the policies aside, other  
9 than recording what happened, based on your experience with  
10:48:56 10 lineups, do you think it adds value to the lineup?

11 A Audio or video recording it?

12 Q Yes.

13 A I don't think it would have in this instance, no.

14 Q Okay. Do you think that it would have increased or  
10:49:13 15 decreased the chance that JV would have made either an  
16 identification, in one instance, or a non-identification in the  
17 other instance?

18 A No.

19 Q Okay. Other than JV's family, did you conduct any more  
10:49:37 20 lineups that day?

21 A Yes.

22 Q Okay. And who was that lineup administered with?

23 A LL, initials.

24 Q Okay. Now, the lineups that you showed LL, were they the  
10:49:51 25 same lineups that you showed to JV?



1 A Yes.

2 Q Okay. So the lineups including Donovan Cloud and the  
3 lineup including -- sorry -- singular lineup including Donovan  
4 Cloud and the lineup including James Cloud, those two lineups  
10:50:08 5 were also shown to LL --

6 A Yes.

7 Q -- later that day?  
8 Sometime that day, right?

9 A Yes.

10:50:21 10 Q Now, sticking to -- let's talk about the lineup you  
11 administered on LL with Donovan Cloud.

12 Did he pick anybody out of that lineup as someone who  
13 had -- he had witnessed committing a crime that day?

14 A No.

10:50:36 15 Q Okay. And I think, for clarity purposes, we should talk  
16 about LL.

17 As you understand it, what was LL a witness to in Medicine  
18 Valley?

19 A He showed up in a truck with some other individuals at John  
10:50:56 20 Cagle's property, um, and eventually the driver and one of the  
21 passengers were shot and killed, and then LL and another  
22 passenger were also injured by a shotgun.

23 Q Okay. And how many times did he arrive at Cagle's  
24 residence that day on separate occasions, if any?

10:51:17 25 A Two times.

1 Q Okay. Regarding the first visit, did he describe any --  
2 any crime occurring that you're aware of?

3 A No.

4 Q Okay. What did he describe?

10:51:28 5 A He said when they arrived, um, an individual had told them  
6 that Dobie wasn't having guests or, you know, not -- wasn't  
7 coming out to talk to anybody, generally.

8 Q Okay.

9 A And to go away, sort of.

10:51:42 10 Q And so that individual wasn't Cagle.

11 A Correct.

12 Q Or Dobie Jacks, as he's sometimes referred to.

13 And then what did they do after that individual told them  
14 that?

10:51:55 15 A Um, so they left. Um, they picked up another person that  
16 they thought would help them, I guess, talk or see John Cagle,  
17 and then they returned.

18 Q Okay. And then what happened when they returned, briefly?

19 A That person went, I guess, onto the property, um,  
10:52:16 20 eventually came back out, and that's when they shot everybody.

21 Q Okay. So let's talk about the lineups then. Let's go back  
22 to that.

23 So June 9th, 2019, the day after he was at Medicine Valley,  
24 you -- you administered a lineup including Donovan Cloud. He  
10:52:36 25 made no identification, correct?

1 A Correct.

2 Q Okay. What about the lineup including James Cloud; any  
3 identification of anyone in that lineup?

4 A No.

10:52:43 5 Q And you showed him two other lineups that day, correct?

6 A Yes.

7 Q Four in total, just like -- just like JV and his family,  
8 right?

9 A Yes.

10:52:50 10 Q Now, he did make an identification on one of those,  
11 correct?

12 A Yes.

13 Q Okay. Of an individual not here today, right?

14 A Correct.

10:52:58 15 Q Okay. Do you recall what he said about that individual  
16 that he had identified?

17 A Generally, he described clothing and, uh, the weapon that  
18 person had.

19 Q Okay. Do you recall the clothing?

10:53:19 20 A A blue shirt.

21 Q Did you have an opportunity to interview LL after that  
22 initial lineup and interview?

23 A Yes.

24 MR. McENTIRE: I'm actually going to object on that,  
10:53:36 25 based on it doesn't match with what the lineup instructions say.

1 It's mischaracterizing the evidence.

2 THE COURT: One second.

3 MR. BURSON: Referring to the lineup --

4 THE COURT: Referring to what? I'm not sure --

10:53:57 5 MR. McENTIRE: It's --

6 THE COURT: What mischaracterizes the evidence?

7 MR. McENTIRE: It's a reference to blue shorts, not a  
8 blue shirt --

9 THE COURT: Oh, I see.

10:54:05 10 MR. McENTIRE: -- according to the written lineup  
11 instructions.

12 THE COURT: Well, that's certainly an error that the  
13 witness might be making, and I'm glad you're pointing it out,  
14 but you can ask that on cross, Counsel.

10:54:16 15 Go ahead.

16 BY MR. BURSON: (Continuing)

17 Q So, Agent Ribail, did you have an opportunity to interview  
18 LL after this initial lineup and interview?

19 A Yes.

10:54:27 20 Q And what was -- when -- when did that interview occur?

21 A That was January, I think, 27th of this year.

22 Q Okay. And so that's about six months after the lineup,  
23 right?

24 A Yes.

10:54:42 25 Q And what was the -- what was the purpose of that interview?

1 A We wanted to clarify a couple things.

2 Q Okay. A couple --

3 A Ask -- ask follow-up questions.

4 Q Okay. About Medicine Valley?

10:54:57 5 A Correct.

6 Q Okay. Did you do a second lineup during that time?

7 A No.

8 Q Okay. Did you ask him any questions to try and elicit  
9 identification of any particular individuals during that

10:55:11 10 interview?

11 A No.

12 Q Okay. So fair to say you were just asking for more details  
13 or to go over details about the incidents at Medicine Valley  
14 that we've been talking about?

10:55:23 15 A Yes.

16 Q Regarding the individuals that were present at Medicine  
17 Valley other than his group, was he describing the clothing worn  
18 by any individuals during this January 2020 interview?

19 A Yes.

10:55:42 20 Q Okay. Can you tell us how he was referring to individuals,  
21 referring to their clothing?

22 A He referred to a male that had a blue shirt and a male that  
23 had a red shirt.

24 Q Okay. So amongst other people; is that right?

10:55:58 25 A Yes.

1 Q Okay. But he just -- he said one male, red shirt; one  
2 male, blue shirt?

3 A Yes.

4 Q Okay. At any point in time did he refer to either of those  
10:56:10 5 individuals by anything other than guy in blue shirt, guy in red  
6 shirt?

7 A Yes.

8 Q How did he refer to them, and which person was he referring  
9 to?

10:56:20 10 A So it caught our attention that on multiple times he  
11 referred to one of them as James Cloud. So we clarified that he  
12 was talking about the person in the red shirt. And then we  
13 asked, "Why are you calling him James Cloud" --

14 Q Hold on.

10:56:38 15 So before we get to that, at some point during the  
16 interview he started referring to the man in the red shirt as  
17 James Cloud?

18 A Correct.

19 Q Okay. Did you ask him why he started referring to the man  
10:56:51 20 in the red shirt as James Cloud during the interview?

21 A Yes.

22 Q Okay. What was his answer? Well, first, do you remember  
23 his verbatim answer?

24 A No.

10:57:03 25 Q Okay. What was his answer?

1 A In the easiest sense, he said he saw James Cloud and the  
2 name on the news.

3 Q Okay. And what was your understanding of what that meant?

4 A What that meant to me was he saw a photo or a video or  
10:57:23 5 whatever on the news --

6 MR. McENTIRE: Objection. It calls for speculation, not  
7 what the witness actually said.

8 THE COURT: Sustained.

9 MR. BURSON: One second, Your Honor.

10:57:40 10 THE COURT: Sure.

11 (Pause in proceedings.)

12 MR. BURSON: Apologies, Your Honor. I start out  
13 organized but ...

14 THE COURT: We all have our own systems, Counsel.

10:58:23 15 (Pause in proceedings.)

16 BY MR. BURSON: (Continuing)

17 Q Following this January 2020 interview with LL, did you  
18 draft a report on a FD-302 form?

19 A Yes.

10:59:08 20 Q Do you recall what you wrote on the FD-302 form regarding  
21 what LL had told you about why he was referring to the man in  
22 the red shirt as James Cloud?

23 A Generally, I do. But not verbatim, no.

24 Q You don't remember exactly what you wrote?

10:59:33 25 A No.

1 Q But you did do the 302?

2 A Correct.

3 Q If you reviewed that 302, would that refresh your  
4 recollection about what you wrote?

10:59:42 5 A Yes.

6 MR. BURSON: May I approach, Your Honor?

7 THE COURT: Go ahead.

8 MR. BURSON: For the record, defense has a copy of this  
9 document they've marked 1018, defense exhibit.

10:59:50 10 THE COURT: Any objection?

11 MR. McENTIRE: None, Your Honor.

12 THE COURT: Okay.

13 MR. BURSON: I'm not sure who to get closest to.

14 BY MR. BURSON: (Continuing)

11:00:03 15 Q Agent, take a minute to review it if you need to.

16 A I'm good.

17 Q Are you done?

18 A Yes.

11:00:10 19 THE COURT: Hold on, Counsel. Before you approach the  
20 witness, would you please wear a mask.

21 MR. BURSON: Yes.

22 Thank you, Your Honor.

23 THE COURT: We're all trying to deal with this new  
24 process. Go ahead.

25



1 BY MR. BURSON: (Continuing)

2 Q Now that you've reviewed the report, do you recall what you  
3 wrote on your 302?

4 A Yes.

11:00:39 5 Q Okay. And can you tell us now what you wrote on the 302?

6 A That he was -- he -- LL told us that he was referring to  
7 the man in red as James Cloud because he saw him in the news.  
8 He saw James Cloud in the news.

9 Q Okay.

11:01:01 10 A And the way I wrote it, it may not be clear to everyone,  
11 but the reason I wrote that was his answer is telling us that he  
12 saw James Cloud on the news, and that's the same person that he  
13 saw in the red shirt. That's why he's calling him James Cloud.

14 Q Okay.

11:01:21 15 MR. McENTIRE: And objection; calls for speculation on  
16 what the witness actually said.

17 THE COURT: Sustained.

18 BY MR. BURSON: (Continuing)

19 Q Fair to say that on the 302, Agent Ribail, you reported  
11:01:41 20 "after seeing Cloud and hearing the name on the news"?

21 A Correct.

22 Q That's what you wrote, right?

23 A Correct.

24 Q To your knowledge, at the time of this interview -- or did  
11:02:21 25 you become aware during your investigation whether there was any

1 prior relationship between LL and James Cloud?

2 A I was not aware of any relationship, no.

3 Q Okay. Do you know if LL was ever asked during the  
4 investigation if -- by law enforcement if he had any prior  
11:02:39 5 relationship with James Cloud?

6 A Not specifically, no.

7 Q Okay. Last question about your conversation with LL: Was  
8 there any indication -- let's back up.

9 You testified earlier you've conducted hundreds of  
11:03:03 10 interviews.

11 A Yes.

12 Q Okay. During these interviews, based on your interactions  
13 with folks during the interviews, are there -- are there certain  
14 times when someone is exhibiting signs of being on a controlled  
11:03:18 15 substance?

16 A Yes.

17 Q Okay. So what are -- give me some examples, maybe, of some  
18 signs that someone might be on a controlled substance when  
19 you're interviewing them.

11:03:29 20 A They can be jittery, they could be tired, they could slur,  
21 um, off-balance.

22 Q Okay. During your interview with LL, was he exhibiting any  
23 signs that he was on a controlled substance?

24 THE COURT: Counsel, could you clarify what interview  
11:03:42 25 you're talking about, the date or the time frame, so that I know

1 which interview we're talking about?

2 MR. BURSON: Yes, Your Honor.

3 THE COURT: Thank you.

4 BY MR. BURSON: (Continuing)

11:03:50 5 Q During your interview with LL in January of 2020, was he  
6 exhibiting any signs that he was on a controlled substance?

7 A No.

8 Q Okay. During the investigation, though, have you become  
9 aware of information, whether from other witnesses or elsewhere,  
11:04:07 10 indicating that he may have been on a controlled substance  
11 sometime around the incident on June 8th, 2019?

12 A Possibly, yes.

13 Q Okay.

14 MR. BURSON: Your Honor, the Government has no further  
11:04:22 15 questions for this witness at this time.

16 THE COURT: Very well. Thank you.

17 Go ahead, Mr. McEntire.

18 MR. McENTIRE: May I please have the technology  
19 activated to the computer station, please?

11:04:43 20 May I proceed, Your Honor?

21 THE COURT: You may. Go ahead.

22

23 CROSS-EXAMINATION

24 BY MR. McENTIRE:

11:05:24 25 Q Good morning, Agent Ribail.

1 A Good morning.

2 Q I just want to make sure that I'm not missing information.

3 We'll start first with some questions about JV's lineup, and

4 then we'll proceed over to LL's lineup, just to keep things

11:05:40 5 organized and in the same sequence.

6 Okay?

7 A Okay.

8 Q So I want to start out by just making sure that I'm not

9 missing any information about JV's lineup or the other lineup of

11:05:52 10 JV's family.

11 The reports that you prepare are called 302s.

12 A Yes.

13 Q And you've prepared many 302s in this case.

14 A Yes.

11:06:04 15 Q And let's just focus on the ones dealing with JV and his  
16 family.

17 You prepared a 302 for a lineup that you did with SV.

18 A Yes.

19 Q One of the sons.

11:06:20 20 And that was a 302 documenting a lineup that you did.

21 A I'm sorry. I couldn't hear.

22 Q That was a 302 documenting a lineup that you administered.

23 A Yes.

24 Q That lineup occurred on June 9th.

11:06:35 25 A Yes.

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1 Q Sunday.

2 A Yes.

3 Q And you drafted the report on June 19th.

4 A I'd have to see the report.

11:07:02 5 THE COURT: Counsel, could you identify the document  
6 that you're showing?

7 MR. McENTIRE: I can, Your Honor. I am -- and this is  
8 not to be admitted. This is just for refreshing recollection.

9 BY MR. McENTIRE: (Continuing)

11:07:12 10 Q Agent Ribail, do you recognize this document?

11 A Yes, I do.

12 Q And this is a 302 that you prepared?

13 A Yes.

14 Q Involving the lineup that you administered on SV.

11:07:22 15 A On what?

16 Q On SV.

17 A There's no name, so I'd have to take your word for it.

18 Q The names are redacted, and fair to say that that's how the  
19 discovery was provided from the United States to Mr. Cloud?

11:07:40 20 A I'll have to take your word for that on -- too. I don't --  
21 I don't --

22 Q Fair enough.

23 A -- turn over discovery to you.

24 Q Turning to the bottom of this particular report, there's a  
11:07:54 25 few different date locations. Fair?

1 A Yes.

2 Q One is when the investigation occurred on.

3 A Yes.

4 Q And you documented June 9th.

11:08:03 5 A Yes.

6 Q And then there's a separate date for when you actually  
7 entered the notes themselves into a report.

8 A Yes.

9 Q And that reflects June 19th.

11:08:12 10 A Yes.

11 Q So with respect to the report administered on -- or drafted  
12 on SV's lineup, there was a ten-day delay between when the  
13 lineup occurred and when you wrote the report.

14 A Yes.

11:08:32 15 Q You also prepared a 302 for a lineup that you administered  
16 on MV.

17 A Yes.

18 Q And that lineup was also administered on June 9th.

19 A Yes.

11:08:42 20 Q And you also prepared that report, again, ten days later,  
21 on June 19th?

22 A I'd have to see the report to -- to know.

23 MR. McENTIRE: Your Honor, again, I'm pulling up not for  
24 admissibility but just for identification purposes to refresh  
11:09:01 25 recollection another 302.

1 BY MR. McENTIRE: (Continuing)

2 Q Agent Ribail, do you recognize this 302?

3 A Yes.

4 Q And this, again, reflects the lineup that you administered  
11:09:12 5 on one of the other children of JV.

6 A I'll have to take your word for it. Yes.

7 Q And, again, this one also was redacted, making it difficult  
8 to find out who administered the lineup and to whom it was  
9 administered on. Fair?

11:09:32 10 A It's clear who administered it. My name is on it.

11 Q Who you administered the lineup --

12 A Okay.

13 Q -- to is difficult to tell from this report.

14 A Yes.

11:09:46 15 Q Down at the bottom there's also the series of dates that  
16 document when the investigation happened, as well as the date  
17 that you wrote this report, correct?

18 A Yes.

19 Q And then, again, it reflects a ten-day delay from June 9th  
11:10:00 20 until June 19th when you actually wrote up this report.

21 A Yes.

22 Q You also prepared a report for the lineup that you did with  
23 NV, the wife of JV.

24 A Yes.

11:10:17 25 Q And, again, that lineup occurred on June 9th.

1 A Yes.

2 Q Since I'm going to anticipate probably your next answer, do  
3 you remember that there was a ten-day delay between that report  
4 and when you -- when the lineup occurred and when you documented  
11:10:34 5 it?

6 A Yes, I see that.

7 Q A ten-day delay as well.

8 A Correct.

9 Q And you also prepared a 302 for JV's lineup as well.

11:10:49 10 A Yes.

11 Q And, again, that lineup occurred on June 9th.

12 A Yes.

13 Q And I'm showing you what's been marked as Defense  
14 Exhibit 1004.

11:11:11 15 Agent Ribail, do you recognize this?

16 A Yes.

17 Q This is the 302 that you prepared to document your lineup  
18 administration on JV.

19 A That's correct.

11:11:25 20 Q I'm going to draw your attention to this exhibit, on 1004,  
21 at the bottom. Again, the date that the lineup occurred, which  
22 was June 9th.

23 A Correct.

24 Q And then the date that you entered the report, which was  
11:11:38 25 June 13th.



1 A Yes.

2 Q So there was a four-day delay on -- from when the lineup  
3 occurred to when you actually wrote down or typed up this  
4 report.

11:11:48 5 A That's correct.

6 Q Now, there was one additional report that you prepared with  
7 respect to your contact with JV --

8 A Yes.

9 Q -- correct?

11:12:09 10 A Yes.

11 Q And that was an encounter that you had with him the  
12 following month, in July, regarding the subject of the Facebook  
13 postings.

14 A Yes.

11:12:22 15 Q And, Agent Ribail, I am pulling up what has been marked as  
16 Defense Exhibit 1005.

17 Do you recognize that report?

18 A I do.

19 Q And that's the report that you prepared regarding the  
20 subsequent contact that you had with JV.

11:12:34

21 A Yes.

22 Q And that contact reflects, again, at the bottom on the  
23 dates, that you contacted or spoke with JV on July 12th.

24 A Yes.

11:12:54 25 Q Roughly a month later.

1 A Yes.

2 Q So if I understand it correctly in terms of the reports  
3 that you prepared, Agent Ribail, there were two total reports  
4 with respect to JV; one that occurred that you typed up on June  
11:13:15 5 13th documenting the lineup, correct?

6 A Yes.

7 Q And a second that was prepared in July regarding contact on  
8 the Facebook posts.

9 A Correct.

11:13:29 10 Q There's no other reports that you can recall preparing  
11 involving your contact with JV?

12 A Not that I recall.

13 Q I want to focus on the delay between the June 9th lineup  
14 and the June 13th in terms of when you documented when -- what  
11:13:57 15 happened during that lineup.

16 Fair to say between June 9th and June 13th, during that  
17 four-day window, you were pretty busy involved with this case?

18 A Yes.

19 Q Interviewing witnesses?

11:14:12 20 A Yes.

21 Q Writing up search warrants?

22 A Yes.

23 Q Executing search warrants?

24 A Yes.

11:14:17 25 Q Searching for evidence?

1 A Yes.

2 Q You indicated that even on the first day, that you were at  
3 one of the scenes until midnight.

4 A Yes.

11:14:25 5 Q So during that four-day time period, a lot was going on.

6 A Absolutely.

7 Q You're coordinating with different law enforcement agencies  
8 during that time as well.

9 A Yes.

11:14:35 10 Q Oregon State Police?

11 A Yes.

12 Q Yakama Nation Tribal Police?

13 A Yes.

14 Q Washington State Patrol?

11:14:42 15 A Yes.

16 Q Yakima County Sheriff's Office?

17 A Yes.

18 Q Fair to call this a multiagency investigation?

19 A Yes.

11:14:55 20 Q During the time, that four-day window -- or during the time  
21 of the lineup, I should say, lineups on June 9th, in addition to  
22 the handwritten notes that you wrote on the lineup instructions,  
23 did you have other notes, handwritten notes that you were taking  
24 to track what was happening?

11:15:16 25 A With the -- regarding the person that I'm interviewing?

1 Q Correct. Regarding JV specifically.

2 A I don't believe so.

3 Q So there were no handwritten notes. So your only  
4 handwritten notes were the ones written on the lineup  
11:15:33 5 instructions.

6 A Yes, my notes are written on the instruction sheet. Yes.

7 Q No other handwritten notes.

8 A Not that I -- not that I'm aware of.

9 Q So when you typed up your report on June 13th documenting  
11:15:51 10 the lineup from June 9th, the only handwritten notes that you  
11 had available to you were the notes written just on the Yakima  
12 County Sheriff's Office lineup instruction form.

13 A Yes.

14 Q There were no other notes documenting the information or  
11:16:17 15 what you discussed with JV?

16 A Not that I'm aware of.

17 Q Agent Ribail, let's talk about your role in this case.

18 My understanding from at least reading the United States'  
19 briefing is that, quote, you took lead in this case.

11:16:50 20 A Was there a question? Sorry.

21 Q Were you the lead investigator in this case?

22 A I am, yes.

23 Q Okay. And so there were multiple agencies that you were  
24 coordinating with a response.

11:17:02 25 A Yes.

1 Q And you were in charge -- the FBI principally was in  
2 charge.

3 A At some point. Initially, there was -- we weren't sure who  
4 was going to be the lead agency.

11:17:17 5 Q Once you got the call, you had mentioned that you were on  
6 duty?

7 A Correct.

8 Q And that you had showed up to the scene.

9 A Correct.

11:17:25 10 Q Shortly after that, the FBI took lead in investigating this  
11 case.

12 A No. It was not until, I would say, 10:00, 11 o'clock at  
13 night that that final decision was made.

14 Q Ah. That day, on June 9th, a decision was made to have the  
11:17:44 15 FBI be the lead agency on this case.

16 A On June 8th at about --

17 Q June 8th, same day.

18 A -- 10:00 p.m.

19 Q Understood.

11:17:53 20 A On that case. But the carjacking, I think, was still in  
21 debate somewhat, who may take that.

22 Q And ultimately there was a decision made to have the FBI  
23 take lead on that case as well.

24 A That's correct.

11:18:06 25 Q So between both the incident at Medicine Valley as well as

1 the incident at JV's house, the FBI ultimately became the lead  
2 investigative agency.

3 A Yes.

4 Q And you became the lead agent over that investigation.

11:18:17 5 A Yes.

6 Q So fair to say, from an investigative standpoint, you were  
7 in charge?

8 A Yes.

9 Q And you mention that there was another FBI agent, Special  
11:18:30 10 Agent Jennifer Terami.

11 A Yes.

12 Q And she was assisting.

13 A Yes.

14 Q But, again, that you were taking charge.

11:18:35 15 A Yes.

16 Q So you were taking the lead in, again, coordinating with  
17 all of these agencies that we've talked about.

18 A Yes.

19 Q You were taking the lead in making decisions on who to  
11:18:48 20 interview.

21 A Some of the time, yes. Sometimes interviews just happen,  
22 so it -- you'd have to be more specific on what -- what decision  
23 I made or didn't make.

24 Q After the FBI was designated or officially asserted itself  
11:19:07 25 as the lead investigative agency, you took the lead in

1 coordinating where to search.

2 A Generally, yes.

3 Q You took the lead in filling out search warrant affidavits.

4 A I wrote some, yes.

11:19:29 5 Q And you indicated that with respect to JV, you were the one  
6 that was responsible for preparing the four Spillman lineups  
7 that were used not only for JV but also for LL.

8 A I was involved in the preparation.

9 Q And -- fair point.

11:19:48 10 So, to clarify, you indicated that there's a technology  
11 that assembles the lineups called Spillman.

12 A That's true.

13 Q That there was, presumably, someone with Yakima County  
14 Sheriff's Office that was using the software.

11:20:04 15 A Yes.

16 Q And you were standing there facilitating in the ultimate  
17 selection of those lineups.

18 A Yes.

19 Q You indicated you enter an individual's name and it spits  
11:20:14 20 out options.

21 A That's my understanding, yes.

22 Q And you can see even other options, and as you testified  
23 earlier, you can sort of select or add or replace as you see  
24 fit.

11:20:25 25 A Yes.

1 Q And you weren't sure how long that process took; somewhere  
2 roughly between one to two hours.

3 A Yes.

4 Q Done at the Yakima station -- substation in Zillah.

11:20:39 5 A Yes.

6 Q For the Yakima County Sheriff's Office.

7 A Yes.

8 Q As the lead investigator, Special Agent Ribail, I mean,  
9 it's your responsibility to make sure that evidence is selected  
10 correctly.

11:20:52

11 A Yes.

12 Q Witnesses are interviewed properly.

13 A Yes.

14 Q And lineups are administered correctly.

11:20:58 15 A Yes.

16 Q And, importantly, that policies are adhered to.

17 A Yes.

18 Q You touched previously upon your experience regarding  
19 eyewitness identifications, but I'd like to develop that a  
20 little bit further.

11:21:15

21 You indicated that you have a 17-year history with the FBI.

22 A Yes.

23 Q I don't believe I caught how long you've been in Yakima.

24 A Uh, I would say four-and-a-half-ish years.

11:21:30 25 Q Before Yakima, the four-and-a-half-year stint that you've



1 had here, where were you?

2 A I was in Newport News, Virginia.

3 Q And before that?

4 A El Centro, California.

11:21:47 5 Q And anywhere else before that?

6 A I was in Modesto, California.

7 Q And before that?

8 A With the FBI? Nowhere. Well, Quantico.

11:22:06 9 Q So during your 17-year tenure with the FBI, you've moved to  
10 four different locations.

11 A Yes.

12 Q After graduating from Quantico.

13 A Yes.

11:22:16 14 Q And you indicated that you've personally conducted  
15 approximately 20 lineups? Photographic lineups.

16 A Yes. Yes.

17 Q And that you've observed another ten.

18 A Yes.

11:22:27 19 MR. BURSON: Actually, I'm going to object. That  
20 misstates prior testimony.

21 THE COURT: It's 10 to 20, but sustained.

22 Go ahead.

23 BY MR. McENTIRE: (Continuing)

11:22:45 24 Q My understanding: As part of your training, you've  
25 received training on how to conduct and administer lineups.

1 A I -- I believe at Quantico we did, yes.

2 Q Have you received ongoing training since your time at  
3 Quantico on how to properly administer lineups?

4 A I don't honestly know that I have or haven't received any  
11:23:04 5 since. We receive training all the time, but I don't know that  
6 I've received any specific only to like that policy manual, for  
7 example.

8 Q So you've received ongoing training from the FBI since you  
9 graduated from Quantico.

11:23:23 10 A Yes.

11 Q But you don't recall whether or not you've received any  
12 specific trainings on lineup administration.

13 A Yes. That would be -- dependent on -- I don't remember any  
14 formal training, but probably with my training agent, um,  
11:23:40 15 on-the-job training. But I can't specifically say that I've had  
16 photo lineup training since the academy.

17 Q Fair to say you didn't attend a class that was a refresher  
18 course on how to attend a lineup or how to administer a lineup?

19 A I can't say for sure one way or another.

11:23:58 20 Q No specific trainings dedicated exclusively to dealing with  
21 the proper administration of a lineup.

22 A I can't say one way or the other.

23 Q In reviewing the United States' briefing, my understanding  
24 is that you actually teach other agents how to administer  
11:24:19 25 lineups.

1 A Yes, I've taught new agents and demonstrated how I  
2 administer lineups. Yes.

3 Q Does it take any particular qualifications or certification  
4 in order to become an instructor with the FBI on how to teach  
11:24:33 5 new agents how to administer a lineup?

6 A No.

7 Q So there's no certification of advanced training that you  
8 received.

9 A No.

11:24:44 10 Q Simply on-the-job training.

11 A Yes.

12 Q So based on the in-person lineups that you've done, it's  
13 your experience from that that was the basis for providing  
14 instruction to other agents.

11:25:00 15 A Well, when I say that, usually I've had a new agent  
16 assigned to work with me, so my job is to train them in whatever  
17 we do as a whole. So it's not specifically training them for  
18 photo lineups. It's day-in and day-out work. You're a training  
19 agent.

11:25:23 20 Q So when you are training new agents, it's just on how to do  
21 the job, not necessarily you've been training them how to  
22 specifically do a lineup?

23 A Correct. You teach them -- yes.

24 Q And taking you back to your training at Quantico, did they  
11:25:43 25 teach you how to construct a photo montage?

1 A Generally, yes.

2 Q Did they instruct you how to instruct a witness before a  
3 lineup?

4 A Yes.

11:26:02 5 Q Did they instruct you on how to provide instructions to a  
6 witness during the lineup itself?

7 A Yes.

8 Q And did it provide instruction on how to instruct a witness  
9 after a lineup?

11:26:18 10 A I don't recall.

11 Q Agent Ribail, fair to say, so your training at Quantico  
12 taught you how to do a lineup?

13 A Yes.

14 Q Did they talk about the why?

11:26:44 15 A I believe so.

16 Q Why it's important to follow certain procedures.

17 A Yes.

18 Q Why it's important to follow certain instructions.

19 A Yes.

11:26:56 20 Q So during your training, they talked to you about why it's  
21 important to create a photo montage in a particular way.

22 A Yes.

23 Q They talked to you about why it's important to instruct a  
24 witness in a particular way before the lineup begins.

11:27:11 25 A Yes.

1 Q Talked to you about why it's important to instruct a  
2 witness in a particular way during the lineup.

3 A I'm sorry. Can you repeat that?

4 Q During your training, you received instruction or guidance  
11:27:27 5 or information on why it's important to provide witnesses with  
6 instructions during the lineup.

7 A Yes. Well, we're -- I don't know what you mean by  
8 "during." I'm sorry. We read them instructions, and then we  
9 perform the lineup, generally. I don't know what you mean  
11:27:45 10 "during."

11 Q Did you receive instructions on if a witness is making  
12 comments, for example, how you should react?

13 A Yes.

14 Q So that's the how. Did --

11:27:55 15 A They should not react.

16 Q -- you receive the why that's important?

17 A Yes.

18 Q Why it's important to provide an answer in a specific way.

19 A I don't understand that question.

11:28:17 20 Q Agent Ribail -- Ribail, excuse me, in the training that  
21 you've received, you'd agree it would be inappropriate to ask a  
22 witness during a lineup, "What about this witness? What about  
23 this suspect right here?" That would be inappropriate.

24 A Correct.

11:28:34 25 Q Did they talk to you about why?

1 A Yes.

2 Q Okay. So during the lineup, you received instruction on  
3 why it's important in the feedback that you provide to an  
4 eyewitness.

11:28:47 5 A No, we don't provide feedback.

6 Q You received instruction why it's important not to do that.

7 A Yes.

8 Q Okay. Did your trainings cover the science behind lineup  
9 administration during this "why" component?

11:29:11 10 A I don't believe so.

11 Q So during your training on how to administer lineups and  
12 why you should administer lineups in a certain way, you received  
13 no training on the science behind human memory.

14 A Well, it's a tough question to answer, because we did  
11:29:28 15 receive training on, uh, the human brain, people how -- their  
16 memory, at different blocks of instruction. So, yeah, I think  
17 overall we -- I would say I have received some training overall,  
18 but not specifically pointed at a photo lineup necessarily.

19 Q So you've received instruction overall on how memories are  
11:29:51 20 made.

21 A A little bit.

22 Q How memories are stored?

23 A Sure.

24 Q How memories are retrieved?

11:30:01 25 A Sure.

1 Q Did you receive instruction on the science behind how  
2 memory does not work like a Polaroid picture?

3 A I don't know.

4 Q Did you cover, during your lineup training, how memory can  
5 be impacted or affected by what a lineup administrator says?

6 A Not specifically, no.

7 Q Did you receive any training on how memory could be  
8 impacted based upon what a lineup administrator does in terms of  
9 behaviors?

10 A No.

11 Q Sounds?

12 A I don't know what you mean by "sounds."

13 Q Did you receive any training on -- on why it's problematic,  
14 for example, if a lineup administrator makes sounds or speaks up  
15 during the lineup process?

16 A We were trained to not be -- yes, not affect the process;  
17 don't make a sound, don't make a gesture, don't do anything that  
18 would lead somebody one way or another.

19 Q And did you receive training on why that's important?

20 A Because we don't want a false identification.

21 Q And did you cover the science behind why that can happen if  
22 you speak up or make gestures or communicate to the witness  
23 during the process?

24 A Not that I recall.

25 Q Special Agent Ribail, you mentioned during your direct

1 testimony that you are familiar with the November FBI lineup  
2 policy from 2013.

3 A Yes.

4 Q You also reflected that you are familiar with -- well, on  
11:32:38 5 that, you mentioned that you're familiar with that 2013 policy,  
6 correct?

7 A Yes.

8 Q But you didn't review it cover to cover.

9 A No, not that I can recall.

11:32:56 10 Q Special Agent Ribail, I want to draw your attention to  
11 what's been marked for identification purposes as Defense  
12 Exhibit 1009, which is appearing on your monitor.

13 Are you familiar with this memorandum that was sent out to  
14 all law enforcement agencies from the deputy attorney general,  
11:33:17 15 on eyewitness identifications?

16 A I am.

17 Q You are familiar with it.

18 A I am.

19 Q Do you recall when you first reviewed this or saw this  
11:33:29 20 memo?

21 A Probably shortly after you filed your motion.

22 Q So shortly after filing the motion, you had an opportunity  
23 to review this update from the deputy attorney general on lineup  
24 policies?

11:34:03 25 A That's correct.



1 MR. BURSON: Objection. Counsel just referred to it as  
2 an update. I'm not sure it's an update to anything.

3 THE COURT: Sustained.

4 THE WITNESS: And let me clarify. I can't say that I've  
5 never seen this before, but my -- my -- my familiarization with  
6 it currently is reviewing it after you submitted your motion.

7 BY MR. McENTIRE: (Continuing)

8 Q Did you have an opportunity to review the document?

9 A Yes.

10 Q Special Agent Ribail, referring to first page of this  
11 memorandum, it discusses (reading): The Department of Justice  
12 last addressed procedures for photo arrays in its 1999  
13 publication, Eyewitness Evidence, a Guide For Law Enforcement --

14 THE COURT: Counsel, we're reading off of a document  
15 that has not been admitted.

16 Do you wish to either lay the foundation, or if you feel  
17 it sufficient, then move to admit.

18 MR. McENTIRE: Certainly, Your Honor.

19 BY MR. McENTIRE: (Continuing)

20 Q Special Agent Ribail, this document, you indicated that you  
21 have recently reviewed it.

22 A Yes.

23 Q Is what you're seeing on the screen a fair and accurate  
24 representation of the January 6th, 2017, memorandum sent out by  
25 the deputy attorney general?

1 A Yes.

2 MR. McENTIRE: I'd move to admit it.

3 MR. BURSON: No objection.

4 THE COURT: It will be admitted.

11:35:43 5 (Defense Exhibit No. 1009 admitted into evidence.)

6 THE COURT: Go ahead. Sorry to have interrupted.

7 MR. McENTIRE: Thank you, Your Honor.

8 BY MR. McENTIRE: (Continuing)

11:35:52 9 Q Drawing your attention to the third paragraph, Special  
10 Agent Ribail, second sentence, it indicates that (reading):  
11 Research and practice have both evolved significantly since  
12 then, referring back to 1999. Fair?

13 A Are you asking me what it says? I'm sorry.

14 Q Correct. Did I accurately read that?

11:36:09 15 A Yes.

16 Q So it's been awhile since main Justice had sent out a  
17 directive or an update, if you will, on guidance, shall we say,  
18 on eyewitness identification. Since 1999.

11:36:29 19 MR. BURSON: Objection; calls for speculation. Agent  
20 Ribail can't be familiar with every document that the Department  
21 of Justice has issued.

22 THE COURT: Sustained.

23 BY MR. McENTIRE: (Continuing)

11:36:38 24 Q Special Agent Ribail, the first sentence in that paragraph  
25 says, (reading): The Department of Justice last addressed

1 procedures for photo arrays in its 1999 publication.

2 Did I read that correctly?

3 A You read that correctly, yes.

4 Q So based on the deputy attorney general's memorandum, the  
11:36:51 5 Department of Justice believes the last time it issued guidance  
6 on this topic was in 1999.

7 A Sure.

8 Q Turning your attention, Special Agent Ribail, to 1009-2,  
9 the second page of this memorandum, it talks about -- first of  
11:37:30 10 all, there's -- there's some policies that are attached to this  
11 memorandum, correct?

12 A I don't know.

13 Q Turning to Page -- turning your attention, excuse me, to  
14 1009-3, attached to this memorandum is a document that reads:  
11:37:55 15 "U.S. Department of Justice Eyewitness Identification Procedures  
16 For Conducting Photo Arrays."

17 Did I read that correctly?

18 A Yes.

19 Q And this is attached to that memorandum.

11:38:07 20 A Yes.

21 Q So there are procedures attached to this memorandum  
22 addressing eyewitness identification.

23 A Yes.

24 Q Turning your attention back to the previous page, 1009-2,  
11:38:26 25 the deputy attorney general is discussing the work that went

1 into updating these policies and procedures, reading, quote:  
2 Over the past year, a team of department experts, including  
3 prosecutors, law enforcement personnel, and social scientists,  
4 have worked together to study the research and identify best  
11:38:47 5 practices. Their work culminated in the attached document,  
6 which outlines procedures for the administration of photo  
7 arrays.

8 Did I read that correctly?

9 A Yes.

11:38:58 10 Q So this is a document prepared by the Department of  
11 Justice.

12 A Yes.

13 Q In conjunction with researchers.

14 A Sure.

11:39:09 15 Q In updating the procedures for photo identification or  
16 lineup policies.

17 A Sure.

18 Q What I'd like to do, Special Agent Ribail, is draw your  
19 attention to a few different sections of this particular  
11:39:33 20 policy -- policies, plural.

21 Turn your attention to 1009-3. First section is discussing  
22 location of the photo array. Fair?

23 A Yes.

24 Q Quote: Unless impracticable, the witness should view the  
11:39:59 25 photo array out of earshot and view of others and in a location

1 that avoids exposing the witness to information or evidence that  
2 could influence the witness' identification, including  
3 information about the case, the progress of the investigation,  
4 or the suspect.

11:40:13 5 Correct?

6 A Yes.

7 Q And you would agree, based on what you testified earlier,  
8 that keeping witnesses away from other witnesses from a lineup  
9 is important.

11:40:27 10 A Yes.

11 Q In fact, you indicated that during the administration of  
12 JV's lineup, that you segregated, if you will, the rest of the  
13 family while you were administering the lineup on JV.

14 A Yes.

11:40:39 15 Q And you did the same for each individual from JV's family.

16 A Yes.

17 Q And you would agree that this is a best practice or  
18 something that should be followed when administering a lineup.

19 A Yes.

11:40:56 20 Q And so what this policy memorializes, if you will, is the  
21 recognition that outside information can influence an  
22 eyewitness's identification.

23 MR. BURSON: Objection, Your Honor. Agent Ribail has  
24 received some training from the FBI on lineup procedures, as  
11:41:15 25 he's indicated. He is not an expert on the science behind it,

1 nor the reasons for it.

2 THE COURT: Sustained.

3 BY MR. McENTIRE: (Continuing)

4 Q Agent Ribail, during your training, you've testified that  
11:41:33 5 you received training not only in how to administer a lineup --  
6 fair?

7 A Yes.

8 Q And one of those trainings that you received was involving  
9 keeping witnesses separate from each other.

11:41:48 10 A Yes.

11 Q You also testified that you received not only instruction  
12 on the how but the why that's important.

13 A Some, yes.

14 Q And you would agree, based upon your 17-year experience  
11:41:59 15 with the FBI, having conducted many lineups, that keeping  
16 witnesses separate or segregated during a lineup is something  
17 that is important.

18 A Yes.

19 Q And you've even agreed -- testified that it is, in fact, a  
11:42:14 20 best practice.

21 A Yes.

22 Q So you are familiar with lineup best practices.

23 A Yes.

24 Q Including this one.

11:42:20 25 A Yes.

1 Q And you would agree, Special Agent Ribail, that from your  
2 training and experience in 17 years with the FBI, having  
3 administered many lineups, receiving training on many lineups,  
4 and teaching others on how to do lineups, that outside  
11:42:41 5 information that a witness may hear could impact the integrity  
6 of that lineup.

7 A While I'm administering them, yes.

8 Q Special Agent Ribail, drawing your attention to  
9 Paragraph 1.2 of that same section under 1009-3, quote: Neither  
11:43:13 10 the suspect nor any photographs of the suspect, including wanted  
11 posters, should be visible in any area where the witness will be  
12 present.

13 Did I read that correctly?

14 A Yes.

11:43:24 15 Q And based upon your 17-year history with the FBI and your  
16 training, that's an important guideline to follow.

17 You'd agree?

18 A Yes. But this is not the FBI's policy.

19 Q Hmm.

11:43:47 20 A I'm not disagreeing with 1.2, but this is --

21 Q I'm sorry. I couldn't hear that.

22 A I said I still agree with 1.2, but this is not the FBI's  
23 policy.

24 Q Hmm. Fair.

11:43:57 25 So you agree with what 1.2 articulates regarding this

1 procedure.

2 A Yes.

3 Q You'd agree that that would be a best practice.

4 A Yes.

11:44:05 5 Q And something that should be implemented with all lineups.

6 A I think it's a best practice, yes.

7 Q And, again, there's a recognition, for example, that a  
8 wanted poster would be outside information that could influence  
9 or corrupt the lineup's integrity.

11:44:22 10 A Are you talking while administering a photo lineup or  
11 anytime ever?

12 Q While administering the photo lineup.

13 A Yes.

14 Q Now, you mention, turning to 1009-2, that the attached  
11:44:41 15 document is, as you indicated, not a, quote, FBI policy,  
16 correct?

17 A Correct.

18 Q I'm drawing your attention to the second paragraph of  
19 1009-2 which states (reading): The heads of the department's  
11:44:56 20 law enforcement components should review these procedures and,  
21 to the extent necessary, update their own internal policies to  
22 ensure they are consistent with the procedures described in this  
23 document.

24 Did I read that correctly?

11:45:07 25 A Yes.



1 Q Now, talking about agency structure, the FBI is part of the  
2 Department of Justice.

3 A We are a component, yes.

4 Q As is the Bureau of Prisons, correct?

11:45:23 5 A Yes.

6 Q As is the U.S. Marshal Service?

7 A Yes.

8 Q As is the ATF.

9 A Yes.

11:45:29 10 Q They are all agencies underneath the umbrella of the  
11 Department of Justice.

12 A Yes.

13 Q So this is a directive coming from the Department of  
14 Justice.

11:45:40 15 MR. BURSON: Objection to the characterization as a  
16 "directive."

17 THE COURT: Sustained.

18 BY MR. McENTIRE: (Continuing)

19 Q This is a memorandum issued by the deputy attorney general  
11:45:48 20 to all law enforcement heads.

21 A I didn't see who it was sent to, but I'll take your word  
22 for it.

23 Q Turning back to the first page, the title of this  
24 memorandum is "Memorandum For Heads of Department Law  
11:46:06 25 Enforcement Components, All Department Prosecutors."

1 Did I read that correctly?

2 A Sure.

3 Q Issued from Sally Yates, the deputy attorney general.

4 A Yes.

11:46:18

5 Q And so this was sent out to heads of department law  
6 enforcement, correct?

7 A It is, but I don't know what that means. Anyway ...

8 Q Returning to this point, though, the FBI is an agency  
9 within the overall branch of the Department of Justice.

11:46:48

10 A Yes.

11 Q So the head law enforcement, if you will, would be the  
12 attorney general.

13 A The head what?

14 Q The head of the Department of Justice is the attorney  
15 general.

11:47:01

16 A Yes.

17 Q And the Department of Justice oversees many law enforcement  
18 components, including the FBI.

19 A I'm not -- I'm not an expert in what the relationship  
20 between DOJ and FBI is, but we do have our own director, so I  
21 don't know that one is above the other, but ... go -- go ahead.

11:47:21

22 Q So, to clarify, I'm sorry, are you -- are you unclear as to  
23 whether or not the Department of Justice is over the FBI with  
24 respect to administrative agencies?

11:47:41

25 A They are an overarching -- yes, DOJ as a whole is over the

1 FBI, but I don't know that the director -- or that the AG can  
2 tell the director of the FBI how to administer policies, I  
3 guess.

4 But, anyway, I would -- so I would agree that this was sent  
11:47:57 5 to the FBI, yes. That's what you're really getting at.

6 Q And turning back to 1009-2 in this first paragraph, you  
7 would agree that in that first sentence it's reflecting that the  
8 heads of department law enforcement components should review  
9 these procedures and, if necessary, update them to be  
11:48:19 10 consistent.

11 A Yes.

12 Q So it sounds like, based on your reading of this, this was  
13 a directive to bring all of the agencies underneath the  
14 Department of Justice in line with this memorandum.

11:48:35 15 MR. BURSON: Objection to the characterization as  
16 "directive" once again.

17 THE COURT: Sustained.

18 BY MR. McENTIRE: (Continuing)

19 Q Agent Ribail, I would like to direct your attention to  
11:49:26 20 1009-6 further down in this policy.

21 One of the instructions from this procedure is under 6.3.7,  
22 (reading): Please do not discuss the procedure or any  
23 photograph that you may pick with any other witness in this  
24 case.

11:49:53 25 Did I read that correctly?

1 A Yes.

2 Q And these are instructions that should be provided to a  
3 witness during a lineup.

4 A Yes.

11:50:03 5 Q And this is, as you testified, consistent with one of the  
6 instructions that you provided to JV.

7 A Yes.

8 Q And, again, this is a recognition, your recognition, that  
9 if JV spoke with the other witnesses, it could impact the  
11:50:21 10 integrity of his identification or vice versa.

11 MR. BURSON: Objection. I don't believe the witness  
12 testified to that earlier. And I frankly don't see how it's  
13 possible that speaking to a witness after the lineup has been  
14 administered would impact the lineup that already occurred. So  
11:50:38 15 I think it's an incorrect statement as well.

16 THE COURT: Overruled. He may answer if he knows.

17 A I'm sorry. Could you repeat.

18 BY MR. McENTIRE: (Continuing)

19 Q Sure.

11:50:48 20 Special Agent Ribail, based on your 17-year experience with  
21 the FBI, you would agree that it is important for one witness  
22 not to discuss the procedure or any photograph that you may pick  
23 with any other witness in the case.

24 A Yes.

11:51:24 25 Q And that's based on the recognition that if, for example,

1 SV was the first person to engage in the lineup and immediately  
2 walked back and spoke with JV, who is next to participate in the  
3 lineup, that communication could impact the integrity of JV's  
4 subsequent participation in the lineup.

11:51:49

5 A Yes.

6 Q Again, this is a recognition that outside information could  
7 influence what a witness selects or who a witness selects.

8 A Yes.

11:52:23

9 Q I'm turning your attention to 1009-7. Under a section  
10 entitled "Administrator Feedback," (reading): The administrator  
11 must avoid any words, sounds, expressions, actions or behaviors  
12 that suggest who the suspect is.

13 Did I read that correctly?

14 A Yes.

11:52:37

15 Q Would you agree, Special Agent Ribail, based upon your  
16 experience and training on lineup administration, it is  
17 important for a lineup administrator to do just that?

18 A Yes.

11:52:57

19 Q And that's based on the recognition that words that a  
20 lineup administrator could say could impact what an  
21 eyewitness -- who an eyewitness picks.

22 A Yes.

23 Q It's a recognition that sounds that a lineup administrator  
24 brings up could impact who an eyewitness selects.

11:53:16

25 A Hypothetically, yes.

1 Q Expressions could impact who an eyewitness selects.

2 A Yes.

3 Q The same with actions.

4 A Yes.

11:53:29 5 Q The same with behaviors.

6 A Yes.

7 Q So there's a recognition by the Department of Justice that  
8 even nonverbal behaviors could impact the integrity of a lineup  
9 administration.

11:53:46 10 A That's what they say, yes.

11 Q Do you agree, Special Agent Ribail, with what is said here,  
12 that it's important and those things could impact the integrity  
13 of a lineup?

14 A Yes.

11:53:59 15 Q So you would agree with this statement.

16 A Yes.

17 Q Special Agent Ribail, I would like to direct your attention  
18 to Defense Exhibit 1011, which is appearing up on your monitor.

19 A Yes.

11:54:36 20 Q This is the FBI's 2013 policy.

21 A Yes.

22 Q And this is the one that you testified earlier that you had  
23 received -- you were familiar with.

24 A Yes.

11:54:48 25 Q But you had not reviewed cover to cover.

1 A I don't believe so. And the one we -- if my memory serves  
2 me correctly, the one we had been using and referring to is  
3 actually this but with an updated or reviewed -- revised 2016  
4 version, I think. I think.

11:55:12 5 MR. BURSON: Could you repeat that one more time, Agent  
6 Ribail?

7 THE WITNESS: I feel like on the cover, I could be  
8 wrong, but ours is November 26, 2013, but reviewed, revised,  
9 something, at a later date. 2016 revisions? No?

11:55:32 10 BY MR. McENTIRE: (Continuing)

11 Q Special Agent Ribail, is it your testimony that this 2013  
12 policy has been updated or amended since this time?

13 A Since 2013?

14 Q Besides the update on June 9th, 2019.

11:55:46 15 A That's why I'm cautiously saying I could be mixing which  
16 one I'm thinking of. A policy that I reviewed in the last few  
17 months had a revision, and I thought it was possibly this one.  
18 I could be incorrect.

19 THE COURT: Counsel, it is noon, and so it might be a  
11:56:08 20 good opportunity that we take a recess at this time, and people  
21 can confer about what things exist and don't exist. Why don't  
22 we take our recess. We'll come back at 1:30, and continue the  
23 testimony at that time.

24 Any -- before we do that, anything we need to address?

11:56:30 25 MR. BURSON: Typically, the Government wouldn't have

1 ongoing conversation with a witness who is in the middle of  
2 cross-examination. Probably best practice. But I think the  
3 Court wanted the Government to clarify that issue or --

4 THE COURT: Why don't you all confer, and then -- and  
11:56:49 5 then if there's a disagreement, then no. If there is an  
6 agreement, then yes. And we'll go from there. All right.

7 THE COURTROOM DEPUTY: All rise.

8 THE COURT: We'll be in recess. Thank you.

9 (Recess taken: 11:57 a.m. to 1:31 p.m.)

11:57:03 10 THE COURTROOM DEPUTY: All rise.

11 (Call to Order of the Court.)

12 THE COURT: Please be seated.

13 Mr. McEntire, are you ready to proceed?

14 MR. McENTIRE: I am, Your Honor.

01:32:06 15 THE COURT: Very well. Go ahead.

16 MR. McENTIRE: And, Your Honor, I will need to approach  
17 the Elmo, if that's okay with the Court.

18 THE COURT: Yes.

01:32:22 20 CONTINUED CROSS-EXAMINATION

21 BY MR. McENTIRE:

22 Q Good afternoon, Special Agent Ribail.

23 A Good afternoon.

24 Q Shortly before we broke for lunch there was a discussion on  
01:32:41 25 policy dates.



1 A Correct.

2 Q And your memory was -- is that there was an update beyond,  
3 or I should say, in between the FBI's November 2013 policy and  
4 the FBI's June 2019 policy, correct?

01:33:01

5 A Possibly, yes.

6 MR. BURSON: Objection. I actually believe that  
7 question misstates the testimony. The testimony was that Agent  
8 Ribail remembers reviewing a document that had a different date  
9 after the November 2013 date. I don't believe he characterized  
10 it as an update to the policies.

01:33:15

11 THE COURT: I understand your point. Overruled.

12 BY MR. McENTIRE: (Continuing)

13 Q Special Agent Ribail, I'm showing you what's been marked  
14 newly as Defense Exhibit 1023.

01:33:36

15 Do you recognize this document?

16 A Yes.

17 Q And this, in fact, is the FBI policy that was first  
18 published on November 26th, 2013, according to the title page.

19 A Yes.

01:33:45

20 Q And updated November 26th, 2016.

21 MR. BURSON: Objection. It doesn't say "updated" on  
22 that cover, Your Honor.

23 THE COURT: Sustained.

24 BY MR. McENTIRE: (Continuing)

01:33:54

25 Q It has a review date of November 26, 2016.

1 A That's correct.

2 Q And this was what you were recalling before we broke for  
3 lunch.

4 A I believe so, yes.

01:34:06 5 Q That there was a policy that had that new date from 2016.

6 A Yes.

7 Q And to your knowledge, was that a document that was  
8 previously provided to defense counsel?

9 A I don't know what was provided to defense counsel.

01:34:23 10 Q Based on discussions over the lunch hour, are you aware  
11 that this document was e-mailed to defense counsel over the  
12 lunch hour?

13 A I had no discussions with anybody during lunch.

14 Q Fair enough.

01:34:36 15 What I'd like to do, Special Agent Ribail, is draw your  
16 attention to a particular page --

17 THE COURT: Counsel, I'm going to stop the testimony.  
18 I'm confused by your question, and I need clarification from the  
19 parties.

01:34:49 20 Are you indicating that you have -- that the defense has  
21 never received this document before?

22 MR. McENTIRE: True.

23 THE COURT: Okay. All right. I guess then I have a  
24 question for the Government.

01:35:00 25 Why is that the case?

1 MR. BURSON: Well, Your Honor, I think it's important to  
2 look at the document in question. The only difference is that  
3 there is a new cover sheet with some administrative materials,  
4 two entire pages, in between it and the start of the cover  
01:35:15 5 sheet, which was provided to the defense and is entered as an  
6 exhibit. So that's the only difference.

7 THE COURT: Okay.

8 MR. BURSON: And then the Government, at least the U.S.  
9 Attorney's Office was not aware of the presence that -- of this  
01:35:26 10 particular cover sheet and two administrative pages.

11 THE COURT: Okay. And I'll hear more about this. I  
12 just wanted to make sure that it wasn't anything more -- if  
13 there are nominal changes, we'll get into that at some point  
14 later, but let's hear testimony on this at this point.

01:35:45 15 Thank you.

16 MR. BURSON: The other clarification I do want to make,  
17 in case it does come up, is that it appears as though earlier  
18 in discovery we released, at the request of the defense,  
19 policies governing eyewitness procedures and photo lineups. In  
01:35:58 20 the interest of time, and to get it to defense, we didn't narrow  
21 the scope for this disclosure, and so it's a little more broad  
22 and covers things not at issue here, such as mugshot lineups,  
23 live lineups, things of that nature, that aren't really at issue  
24 in this case.

01:36:15 25 THE COURT: All right. Well, we'll get to that when we

1 get to that.

2 Thank you.

3 BY MR. McENTIRE: (Continuing)

4 Q Special Agent Ribail, in the morning you had indicated that  
01:36:22 5 it was your understanding that the lineup that you had  
6 administered to JV was conducted in compliance with the  
7 November 2013 policy.

8 A Generally, yes. I'm not going to say it was perfect, but  
9 yes.

01:36:54 10 Q So, Special Agent Ribail, I'm directing your attention to  
11 defense exhibit marked for identification purposes as 1023.

12 And in this vein, you recognize this document?

13 A Yes.

14 Q This is a 21-page document that has this title page again  
01:37:26 15 with the publish date of November 26th.

16 MS. YOUNGCOURT: Your Honor, this monitor is not on for  
17 them to see.

18 Thank you.

19 THE COURT: Oh, apologies.

01:37:37 20 Is that working now?

21 Thank you. Thank you for letting us know.

22 Go ahead.

23 MR. McENTIRE: Thank you, Your Honor.

24 BY MR. McENTIRE: (Continuing)

01:37:47 25 Q And, again, the review date of November 26th, 2016.

1 A Yes.

2 Q Does this document, 21-page document fairly and accurately  
3 represent the FBI's lineup policy as reviewed on November 26,  
4 2016?

01:38:02

5 A Yes.

6 MR. McENTIRE: And I'd move to admit this exhibit, Your  
7 Honor?

8 THE COURT: Any objection?

9 MR. BURSON: No objection.

01:38:06

10 THE COURT: It will be admitted.

11 (Defense Exhibit No. 1023 admitted into evidence.)

12 BY MR. McENTIRE: (Continuing)

13 Q Turning, Special Agent Ribail, to Page 13 of Exhibit 1023,  
14 under Section 3.6.4, that title is "Sequential Live Lineup  
15 Identification Procedures."

01:38:30

16 Did I read that correctly?

17 A Yes.

18 Q And this is a series of instructions or guidance for  
19 special agents administering lineups in the -- in the field or  
20 wherever you happen to be administering a lineup.

01:38:44

21 A Yes.

22 Q And it's -- indicates that "investigators are responsible  
23 that the lineup should do," and, again, a series of bullet point  
24 instructions.

01:38:59

25 A Yes.

1 Q Near the bottom, third from bottom (reading): Request the  
2 witness not to discuss the identification procedure or its  
3 results with other witnesses involved in the case.

4 MR. BURSON: Your Honor, I'm going to make an objection  
01:39:12 5 to relevance. This case doesn't deal with live lineups. This  
6 was a photo lineup.

7 THE COURT: Overruled. Go ahead.

8 BY MR. McENTIRE: (Continuing)

9 Q And this is an instruction that you provided to JV.

01:39:25 10 A Can you repeat? I couldn't hear part of --

11 Q Certainly.

12 Essentially the "do not contact" -- or "do not discuss your  
13 lineup with other witnesses," this is an instruction that you  
14 mentioned earlier this morning that you had provided to JV.

01:39:38 15 A Yes.

16 Q The second part of this is that "and request that the  
17 witness not have contact with the media."

18 A What was the question, that that's in the policy?

19 Q Correct.

01:39:52 20 A Yes. Yes.

21 Q And you had indicated this morning, when asked about that  
22 second part of the policy, that, quote, generally you sort of  
23 forgot, unquote, as to giving that last part of the instruction.

24 A That's correct.

01:40:08 25 Q And, quote, felt like this wasn't the type of guy that

1 would go and contact the media, unquote.

2 A Yes, due -- if I can elaborate, I can't quote, but he made  
3 a statement like, you know, "I don't want to talk to anybody  
4 about this," or something that -- yeah. So, yes, between me not  
01:40:26 5 having, obviously, this policy with me, using the sheriff's  
6 policy, which does not contain this language, and I -- generally  
7 not feeling it necessary, we did not tell him to contact the  
8 media.

9 Q So this is a procedure that is set forth in the FBI's  
01:40:43 10 policy manual, correct?

11 A Yes.

12 Q That you agree you did not follow.

13 A Correct.

14 Q I'd like to turn your attention to a different section from  
01:40:59 15 this lineup -- or from this policy manual, excuse me.

16 MR. McENTIRE: Again, Your Honor, this is Defense  
17 Exhibit 1023, Page 10.

18 BY MR. McENTIRE: (Continuing)

19 Q I'm under Section 3.5.6, "Recording Showup Results."

01:41:26 20 Do you recognize this section of the lineup procedure?

21 A I do. I'd like to point out that this is not the lineup  
22 section; neither was the previous.

23 Q Under the second section here (reading): For each witness,  
24 document a statement regarding the degree of certainty for both  
01:41:47 25 identification and nonidentification results.

1 MR. BURSON: Objection; relevance, Your Honor. There  
2 was no show-up here. That's not what any testimony has been  
3 about.

4 THE COURT: Overruled. Go ahead.

01:41:58 5 BY MR. McENTIRE: (Continuing)

6 Q You indicated, with respect to lineup 5032, the one for  
7 Donovan Cloud, that -- and I'm paraphrasing your testimony from  
8 this morning -- that you felt JV's response was -- in terms of  
9 tearing up was your interpretation of his level of certainty.

01:42:23 10 A That and other factors, yes.

11 Q And you had documented that in your 302 regarding that  
12 lineup.

13 A Documented what?

14 Q His response, his reaction.

01:42:36 15 A Yes.

16 Q And you had written that down again on the YCO lineup  
17 instructions.

18 A Yes.

19 Q You indicated that that morning -- or afternoon, excuse me,  
01:42:49 20 you had administered three other lineups besides the one to JV.  
21 To MV, correct?

22 A Yes.

23 Q As well as SV?

24 A Yes.

01:43:05 25 Q As well as NV.



1 A Yes.

2 Q And in each of those other lineups besides JV, no one  
3 selected either James Cloud or Donovan Cloud from those lineups.

4 A That is correct.

01:43:27

5 Q And in your 302, you did not document the level of  
6 certainty of the nonidentification presented by NV.

7 A I'm not aware how you document a nonidentification. I  
8 wrote NV, or whoever we're discussing, did not identify anybody.  
9 So there's a level of certainty when they say, "I can't identify  
10 anybody" or "I don't recognize anybody."

01:43:54

11 But I did, uh -- I don't want to go too far, unless you  
12 want to show me some of the other reports, but I did note things  
13 they observed and other statements they made. But they did not  
14 identify anybody.

01:44:12

15 Q When you administered the lineup to JV, he did not identify  
16 James Cloud.

17 A Correct.

18 Q And in your 302 documenting that, you did not record the  
19 level of certainty of that nonidentification.

01:44:35

20 A I feel like I already answered that. No, I didn't. I  
21 don't know how you document my level of certainty that "I don't  
22 recognize anybody."

23 Q So, for example, "definitely not No. 2," that would be a  
24 level of certainty indicated by an eyewitness.

01:44:55

25 Agreed?

1 A Yes.

2 Q And that is information relevant to writing down or  
3 recording as part of your documentation of a lineup.

4 A It could be.

01:45:09 5 Q But you did not document the level of certainty regarding  
6 JV for the nonidentifications.

7 A I wouldn't say that's true, no. I documented statements  
8 that the witness said. In general, if I hand somebody a photo,  
9 and they just hand it back, I hand them another one until we're  
01:45:34 10 done. And then when we're done, "Do you recognize anybody?"

11 "No."

12 So I -- I -- I write my report, and I say, "Witness did not  
13 identify anybody."

14 If I hand it, and they say, "No, no, no, no, no, no," I  
01:45:46 15 would still -- I would still write, "The witness did not  
16 identify anybody."

17 If I hand it to them and they say, "He looks similar to,"  
18 then I document that. And that's how my reports are written.

19 Q Okay. Special Agent Ribail, going back to the instruction  
01:46:35 20 from the FBI's policy that -- asking witnesses, not directing  
21 but asking witnesses not to speak with other individuals --

22 MR. McENTIRE: And may I have the technology, actually,  
23 switched over to the table, please.

24 BY MR. McENTIRE: (Continuing)

01:47:33 25 Q I want to actually just pivot for a moment to, you had

1 mentioned there is also an FBI 2019 policy.

2 A Yes.

3 Q And that came into effect on June 9th, 2019.

4 A That is the date of the policy. I don't know when it was  
01:47:52 5 published or put into effect, but that is the date of the  
6 policy, yes.

7 Q So I am drawing your attention, Special Agent Ribail, to  
8 Defense Exhibit 1012, which is the policy that we were just  
9 discussing, this June 2019 policy.

01:48:24 10 A Yes.

11 Q So is it your testimony that the date June 9th, 2019, is  
12 not the date that that policy went into effect?

13 A It may be, but the FBI may have put it -- for like my -- I  
14 may not have had the ability to view this policy until Monday,  
01:48:44 15 Tuesday, Wednesday, who knows? Because this was a Sunday, and  
16 most government employees don't work on Sundays. So who knows  
17 when it was actually made available to review.

18 Q Fair.

19 So you're drawing a distinction between maybe when the  
01:48:58 20 policy, the date it went into effect versus when you were  
21 actually able to view it.

22 A Correct.

23 Q So you have no disagreement with the idea that this policy  
24 went into effect on June 9th, 2019, but you may have reviewed it  
01:49:12 25 later.

1 A It's possible, yes.

2 Q And you've reviewed this policy.

3 A Yes.

4 Q I want to draw your attention to 1012-6 --

01:49:33 5 THE COURT: Counsel, has this document been identified  
6 and admitted?

7 MR. McENTIRE: Good point, Your Honor.

8 BY MR. McENTIRE: (Continuing)

01:49:43 9 Q With respect to 1012, Special Agent Ribail, do you  
10 recognize this document?

11 A Yes.

12 Q Is it a fair and accurate representation of the FBI's  
13 June 2019 policy?

14 A Yes.

01:49:51 15 MR. McENTIRE: I'd move to admit it.

16 MR. BURSON: No objection.

17 THE COURT: It will be admitted.

18 (Defense Exhibit No. 1012 admitted into evidence.)

19 BY MR. McENTIRE: (Continuing)

01:50:00 20 Q I'm going to draw your attention to 1012-6, which is the  
21 sixth page of this policy manual. This is the Authorities  
22 section.

23 Agreed?

24 A Yes.

01:50:13 25 Q This is the justification, or authority, if you will, for

1 where these policies are coming from.

2 A Yes.

3 Q It lists three things. The first is the Constitution of  
4 the United States.

01:50:27 5 A Is that a question?

6 Q Agreed?

7 A Yes.

8 Q The second is the Attorney General's Guidelines For  
9 Domestic FBI Operations, As Amended?

01:50:35 10 A Yes.

11 Q And the third is the Department of Justice Memorandum,  
12 Eyewitness Identification Procedures For Conducting Photo  
13 Arrays, January 6th, 2017.

14 A Yes.

01:50:46 15 Q So the authority for the amendments to the FBI policy come  
16 from the January 6th, 2017, memo from the deputy attorney  
17 general.

18 A Yes.

19 Q So this was essentially the FBI revising their policies and  
01:51:05 20 using as authority for those amendments what was contained in  
21 that memorandum.

22 A Yes.

23 Q I want to direct your attention back to -- back to Defense  
24 Exhibit 1009, which is that policy that we -- excuse me, that  
01:51:40 25 memorandum that we had just discussed.

1 I've got it up on your monitor right now. And I'd like to  
2 draw your attention specifically to 1009-7. There's a section  
3 from this memorandum specifically title "Documentation."

4 Fair? Correct?

01:52:09

5 A I'm sorry. I'm reading.

6 What was your question?

7 Q There's a section here that is contained in this policy  
8 called "Documentation"?

9 A Yes.

01:52:20

10 Q And under 9.1, it specifically states that (reading): The  
11 witness' identification of a photo, if any, and the  
12 corresponding statement of confidence should be clearly  
13 documented by video or audio recording the photo array.

14 Did I read that correctly?

01:52:38

15 A Yes.

16 Q And so this is the policy section attached to the memo sent  
17 out in January of 2017.

18 A Yes, from the DOJ policy. Yes.

01:53:03

19 Q Recording is not something that's referenced back from the  
20 2013 FBI policy.

21 A Correct.

22 Q So this is something that's new.

23 A For the FBI in the 2019 policy, yes.

01:53:39

24 Q I'd like to draw your attention to a footnote specifically  
25 from that section entitled "Documentation."

1 (Reading): Electronic recording serves several important  
2 purposes. It preserves the identification process for later  
3 review in court.

4 Is that something that you would agree with?

01:53:54

5 A Sure.

6 Q (Reading): It protects officers from unfounded claims of  
7 misconduct.

8 A True.

01:54:04

9 Q (Reading): And it allows fact finders to directly evaluate  
10 the witness' verbal and nonverbal reactions and any aspects of  
11 the array procedure that would help contextualize or explain the  
12 witness' selection.

13 A Sure. I do apologize, but sometimes I feel like you're  
14 making a statement versus asking me a question. So ...

01:54:24

15 Q Based on your experience and training, Special Agent  
16 Ribail, what this footnote says makes sense. Fair?

17 A I think it makes sense, yeah. I don't know that it makes  
18 sense in every instance, but I have no problem with, uh, this  
19 policy generally.

01:54:42

20 Q Would you agree that a video recording of a lineup would  
21 allow a fact finder to hear everything that was said during a  
22 lineup?

23 A Yeah, it would.

24 Q All the words exchanged?

01:54:53

25 A Yes.

1 Q All the sounds made?

2 A Yes.

3 Q All the behaviors and gesticulations that the lineup  
4 administrator made?

01:55:02 5 A Yes.

6 Q And all the behaviors and gesticulations that the  
7 eyewitness made?

8 A Yes.

9 Q So a video recording would allow a judge to see the  
01:55:11 10 witness' expressions, which may be important.

11 A Possibly.

12 Q A video recording would allow the judge to see your  
13 expressions as the lineup administrator, which may be important.

14 A Yes.

01:55:25 15 Q Effectively, a recording gives the fact finder greater  
16 context to assess what happened.

17 A Yes.

18 Q And greater context, Special Agent Ribail, you'd agree,  
19 means that the fact finder is more fully informed.

01:55:46 20 A I'm sorry. I couldn't hear the last part.

21 Q It means the fact finder would be more fully informed  
22 regarding what happened that day.

23 A Yes.

24 Q I want to direct your attention, Special Agent Ribail, to  
01:56:09 25 Defense Exhibit 1009, Page 12.



1           There's a section from this memorandum specifically titled  
2       "Recording the Photo Array."

3       A     I'm sorry. Can I interrupt? I thought you said Page 12.  
4       I'm on Page 10.

01:56:41 5       Q     Fair. The defense exhibit marking is 1009-12.

6       A     Okay. I'm sorry.

7       Q     And there's a section here entitled "Recording the Photo  
8       Array."

9       A     Yes.

01:56:55 10      Q     And down there at the bottom, last sentence, it reads  
11       (reading): If video is impracticable, however, an audiotape may  
12       be useful, because it allows judges and jurors to hear exactly  
13       what was said by both the administrator and the witness rather  
14       than relying exclusively on an oral or written report about the  
01:57:14 15       procedure.

16           Correct?

17      A     That's what it says, yes.

18      Q     And you'd agree, Special Agent Ribail, that an audio  
19       recording would allow a fact finder to hear everything that  
01:57:28 20       occurred during that lineup.

21           MR. BURSON: Objection; calls for speculation about the  
22       quality of the audio recording at issue.

23           THE COURT: Overruled.

24      A     Yes. I mean, assuming, yeah, it works. Sometimes you do  
01:57:43 25       interviews outside in the wind and other things make it so you

1 cannot hear everything, but yes.

2 BY MR. McENTIRE: (Continuing)

3 Q Put differently, an audio recording, when coupled with your  
4 notes or report, would give the fact finder greater context on  
5 what happened during that lineup.

01:57:59

6 MR. BURSON: Objection, Your Honor. This applies to a  
7 lot of the questions so far, but we're getting into  
8 argumentative territory at this point. Counsel is essentially  
9 testifying here.

01:58:09

10 THE COURT: Overruled. He can answer.

11 A I'd like to define who a "fact finder" is. Am I a fact  
12 finder? Who are you referring to?

13 MR. SMITH: Would you please pull the microphone a  
14 little closer to you?

01:58:22

15 THE WITNESS: For me?

16 MR. SMITH: Yes.

17 THE WITNESS: Sorry.

18 MR. SMITH: Thank you.

19 BY MR. McENTIRE: (Continuing)

01:58:37

20 Q Turning back to 1009-7 under the section titled  
21 "Documentation," Footnote 3 (reading): It preserves the  
22 identification process for later review in court, it protects  
23 officers against unfounded claims of misconduct, and it allows  
24 fact finders to directly evaluate a witness' verbal and  
25 nonverbal reactions.

01:58:57

1 Special Agent Ribail, is it fair to say that when this  
2 memorandum is referring to a "fact finder," it would be  
3 referring to either the Court or a jury?

4 A I don't know what the definition of a "fact finder" is in  
01:59:12 5 this context. It's not a term we use in -- like in the FBI  
6 policy, I don't think you'd see that term, so I'm unsure what  
7 that means. But, yeah, I think it would make -- the recording  
8 would serve myself, the Court, uh, a jury, defense attorneys;  
9 everybody, I guess, if that's what it means.

01:59:31 10 Q So in that respect, an audio recording would help provide  
11 additional context to that fact finder, let's say a judge.

12 A Possibly.

13 Q You had mentioned earlier this morning that you were at the  
14 Zillah substation preparing the lineup for one, maybe up to two  
01:59:52 15 hours.

16 A Yes.

17 Q When you left that morning -- or when you headed out to  
18 JV's residence, it wasn't just you.

19 A Correct.

02:00:03 20 Q There was another detective that was with you.

21 A Yes.

22 Q Dan Cypher from the Yakima County Sheriff's Office.

23 A Yes.

24 Q When you went out there, Special Agent Ribail, did you have  
02:00:14 25 your phone with you?

1 A Yes.

2 Q Does your phone have the capability of video recording?

3 A Generally, yes.

4 Q Does it have the capability of audio recording?

02:00:30 5 A I don't know. That's a good question. I used to have it  
6 turned off. But I would assume we can make a video with audio,  
7 that maybe the audio mic works. I don't know. It's a good  
8 question.

9 Q Do you know whether or not Detective Dan Cypher had a phone  
02:00:45 10 with him that day?

11 A I'm sure he did.

12 Q Do you know whether or not his phone was capable of video  
13 or audio recording?

14 A That I don't know.

02:00:57 15 Q So you had a phone with you capable of doing some form of  
16 recording.

17 A Yes. But I don't believe, if I can clarify, that me  
18 recording an interview with my phone would be within FBI policy.  
19 Nowhere is it required to record the lineups at that point,  
02:01:23 20 period.

21 Q Special Agent Ribail, do you remember going to the Benton  
22 County Jail to collect DNA from James Cloud?

23 A To collect DNA?

24 Q (Nodded.)

02:01:59 25 A Was it DNA or fingerprints? I think --

1 Q Do you remember going to the Benton County Jail?

2 A I've been there a lot. Sorry.

3 Q Do you remember going to the Benton County Jail in this  
4 case and present were not only James Cloud but also one of his  
02:02:16 5 attorneys, Lorinda Youngcourt?

6 A Yes. We did fingerprints and -- and DNA, yes.

7 Q Do you remember using your phone to take photographs of  
8 James Cloud that day?

9 A Yes. If I can clarify, I am allowed to take a photograph  
02:02:34 10 with my phone. I am not authorized, in general, to record an  
11 interview with my phone. I would need permission, various  
12 permissions. And I'm not even sure I could -- would be allowed  
13 to use my phone, but to do a recorded interview I need  
14 permission in advance.

02:02:56 15 Q And that's permission that you did not seek to obtain  
16 before heading out to administer either the lineup with JV or  
17 his family or LL.

18 A No, I did not.

19 Q And nor did you bring any type of recording equipment with  
02:03:14 20 you.

21 A I don't believe I had any, because I believe I was riding  
22 with Dan Cypher, and any recording device I would have would  
23 have been in my -- my vehicle.

24 Q Special Agent Ribail, you had mentioned the amount of time  
02:03:42 25 that you had spent at the Zillah substation.

1 Was that information that you had reflected in your 302?

2 A Which information?

3 Q That you had spent one to two hours compiling a -- a lineup  
4 there.

02:03:54 5 A No.

6 Q You had mentioned that you had used the Spillman technology  
7 to help assemble the lineup, correct?

8 A Yes.

9 Q Was that information that you had included in your 302?

02:04:04 10 A Indirectly, yes, by attaching the, in my opinion, by  
11 attaching the lineups with the numbers and all of that. To me,  
12 that is -- that makes it, I guess, reproducible or, for me,  
13 obvious what -- how we made them, and they're -- had the ability  
14 to retrieve them again. That's why we kept the numbers and  
02:04:27 15 stuff like that of the photo lineups.

16 Q You had mentioned and testified earlier today that the  
17 lineups were conducted in the driveway of [REDACTED] -- JV's  
18 residence.

19 A Yes.

02:04:45 20 Q Was that information that was reflected in your 302?

21 A No.

22 Q You had mentioned that the family members were interviewed  
23 and shown lineups separately and one at a time.

24 A I'm sorry?

02:04:56 25 Q You had testified earlier today that the family members

1 were interviewed and showed lineups separately and one at a  
2 time.

3 A Yes.

4 Q Was that information that was reflected in your 302?

02:05:06 5 A Yes.

6 Q It was.

7 I'm pulling up Defense Exhibit 1004, which is your 302  
8 documenting the lineup with JV that day.

9 Can you point to me where that's reflected in your 302.

02:05:31 10 A It's -- I -- you want me to point? I'm sorry. What do you  
11 mean, "point"?

12 Q Where is that information reflected in your report?

13 A So if there were more than one person present, their name  
14 would be listed as being present during the interview, and they  
02:05:45 15 are not.

16 Q So it doesn't state that.

17 A To me, it does. As the author of this report, if there  
18 were more people there, I would put that there were more people  
19 there. I don't -- I don't write a report, if I go to somebody's  
02:06:02 20 house, and they're by themselves, I don't write "no one else is  
21 present." I just write who is there and who is a party to the  
22 interview.

23 Q You testified earlier today that while one member was being  
24 interviewed, the others were sequestered and out of earshot.

02:06:20 25 Was that reflected in your 302?

1 A No.

2 Q You testified earlier today that the photos were shown to  
3 JV one at a time.

4 A Yes.

02:06:34

5 Q And that's referred to as a sequential technique?

6 A Yes.

7 Q Was that reflected in your 302?

02:06:55

8 A It's reflected in my report, my overall report, which is,  
9 to me, the 302 and the corresponding documents that are attached  
10 to or made part of the file with the interview report.

11 Q Special Agent Ribail, I want to draw your attention back to  
12 the FBI's 2019 policy. This is Exhibit 1012-4.

02:07:34

13 Section 4.7.4, under the section "Documenting the Use of a  
14 Photographic Lineup," under the third bullet point one of the  
15 things the documentation should include are, quote, the  
16 procedures used in the photographic lineup, i.e. sequential or  
17 simultaneous.

02:07:52

18 So going back to my question: Is whether or not this is  
19 was a sequential or simultaneous lineup reflected anywhere in  
20 your report?

21 A My opinion stands, is, yes, it's -- it is documented. And  
22 this is not the policy that I was operating under when these  
23 took place. This is the policy that came out on Sunday. It's  
24 dated Sunday.

02:08:11

25 Q So this policy that came out on June 9th, 2019, it's your



1 testimony that you do not believe that that policy controls.

2 A I don't think it controlled my actions during that day  
3 because I was unaware of the policy on June 9th. That policy  
4 could have come out at 11:00 p.m. on June 9th or, like I said,  
02:08:34 5 it could have been published for my access on June 10th. I  
6 don't know. I just know that I was in White Swan with no  
7 access -- even if I had even thought to review if there had been  
8 a policy change, I wasn't in the office to do so, period, nor  
9 was I notified by e-mail, or any other means, that there was a  
02:08:52 10 new policy to be reviewed on that day.

11 Q Your testimony this morning is that you conducted each  
12 lineup by placing the photographs down on -- in a stack on the  
13 hood of a truck.

14 A Car.

02:09:05 15 Q Car.

16 A Yes.

17 Q Is that information that was reflected in your report?

18 A No.

19 Q And, Special Agent Ribail, you mention that you've been  
02:09:41 20 with the FBI for 17 years.

21 A Yes.

22 Q And so you started with the agency, the Bureau sometime  
23 around 2003?

24 A Yes.

02:09:55 25 Q So directing your attention back to Defense Exhibit 1009,

1 turning to that third paragraph, first sentence, that (reading):  
2 The Department of Justice last addressed procedures for photo  
3 arrays in its 1999 publication Eyewitness Evidence, a Guide For  
4 Law Enforcement.

02:10:20 5 So that was the last DOJ guidance before this 2017  
6 memorandum.

7 Is that something that you had received training on at the  
8 academy?

9 A The 1999?

02:10:34 10 Q Correct.

11 A I don't know. I know we received training. I don't know  
12 where it came from.

13 Q I'm pulling up what's been marked Defense Exhibit 1010,  
14 which is the Eyewitness Evidence, a Guide For Law Enforcement  
02:10:59 15 from 1999.

16 Special Agent Ribail, do you recognize this document?

17 A I can't say that I do.

18 Q So during your experience or training, this is not a  
19 document -- this -- procedures outlined in this document is not  
02:11:14 20 something that you are familiar with or can recall having  
21 reviewed?

22 A No.

23 MR. McENTIRE: Your Honor, what I'd like to do is offer  
24 this under -- again, Defense Exhibit 1010 for purposes of asking  
02:11:31 25 a few questions.

1 THE COURT: Counsel?

2 MR. BURSON: Sorry. Is it being admitted into evidence  
3 or is it --

4 MR. McENTIRE: Yeah, right now just as a basis to ask a  
5 few questions.

02:11:42

6 MR. BURSON: No objection.

7 THE COURT: Okay.

8 (Defense Exhibit No. 1010 admitted conditionally into  
9 evidence.)

02:12:00

10 BY MR. McENTIRE: (Continuing)

11 Q Special Agent Ribail, I'm directing your attention to  
12 Defense Exhibit 1010-26, which has a section titled "Obtaining  
13 Information From the Witnesses."

14 And on the very next page, on a continuation, there's two  
15 instructions there, or guidelines, No. 8 being -- excuse me,  
16 No. 7 being (reading): Encourage the witness to avoid contact  
17 with the media or exposure to media accounts concerning the  
18 incident.

19 Is that something that you're familiar with?

02:12:41

20 A I am not familiar with this manual, so no.

21 Q During your training with the FBI, as we've talked about  
22 from this morning --

23 A Correct.

24 Q -- we talked about various forms of outside influence and  
25 how they could impact an eyewitness.

02:12:56

1 A We did.

2 Q And we talked about how it's important to minimize outside  
3 influence as much as possible, as an agent conducting a lineup.

4 A Was that a question?

02:13:10 5 Q Yes.

6 A I didn't -- I'm sorry. Can you rephrase it then? I heard  
7 a statement.

8 Q Sure.

9 We talked about minimizing, the importance of minimizing  
02:13:20 10 outside influence as a lineup administrator, correct?

11 A Yes.

12 Q And you would agree that that's something that is, a lineup  
13 administrator should endeavor to do.

14 A I couldn't hear the last part.

02:13:36 15 Q That a lineup administrator should endeavor to do.

16 A Yes.

17 Q So, Special Agent Ribail, when you were going through  
18 Quantico, you had indicated that you had received generalized  
19 training on lineup administrations.

02:14:03 20 A Yes.

21 Q And how to conduct them.

22 A Yes.

23 Q And why the procedures of administering a lineup are  
24 particularly important.

02:14:13 25 A Yes.

1 Q To follow them.

2 A Yes.

3 Q And one of the things, again, that is always a goal is to  
4 minimize outside influence.

02:14:21 5 A Yes.

6 Q And this is a guide from the Department of Justice on  
7 encouraging a witness to avoid contact with media or exposure to  
8 media accounts concerning the incident.

9 THE COURT: Well, Counsel, this document has not been  
02:14:35 10 identified, so I -- that's an improper question. If you could  
11 rephrase that.

12 (Counsel conferring.)

13 THE COURT: And the reason I interrupted is because  
14 you're referring to this document, and the Government hasn't  
02:14:58 15 objected, which is fine, but this document has not been  
16 admitted, so referring to it anything other than a document that  
17 this witness is reviewing would be improper.

18 MR. McENTIRE: And, Your Honor, what I would ask for is  
19 conditional admissibility on the grounds that our expert witness  
02:15:11 20 will be laying foundation for this document and admitting it  
21 through her.

22 THE COURT: Any objection to that?

23 MR. BURSON: No, Your Honor.

24 THE COURT: Okay. It will be admitted for that purpose  
02:15:20 25 with that caveat.

1 Go ahead.

2 BY MR. McENTIRE: (Continuing)

3 Q So, Special Agent Ribail, in your investigation and  
4 training as an agent, it's your testimony that this is not an  
02:15:32 5 instruction or guidance that you ever received.

6 A That I don't know. We -- I'm sure when I got into the FBI  
7 in 2003 there was a policy, an FBI policy, and then at some  
8 point it changed, and maybe even changed again, until we had  
9 the -- the 2013 policy that we've been reviewing, and that's  
02:15:52 10 what I was operating under up until learning that there was a  
11 new policy that came out in 2019.

12 But as far as DOJ policies and memos, they don't -- I'm not  
13 saying they shouldn't affect me, but they don't. I'm not -- DOJ  
14 does not e-mail us their ideas of policies. They go to FBI  
02:16:15 15 management, and FBI management makes a decision whether to enact  
16 some of those policies or ideas or not, and then they push them  
17 down to us.

18 So anything other than FBI policy I can't -- I can't say --  
19 I don't have to follow, um, or -- and I may not even be aware  
02:16:31 20 that it exists. So this -- I don't know whether this existed or  
21 not. This could have been something they used at the academy.  
22 I don't know.

23 Q You would agree that exposure to media counts as a form of  
24 outside information. Watching the news, for example.

02:16:48 25 MR. BURSON: Objection. We keep talking about exposure

1 to outside information. Without some sort of time limitation  
2 here, it's a vague question. There's outside information that  
3 comes in during the lineup, and there's outside information  
4 after the lineup.

02:17:01 5 THE COURT: Sustained.

6 BY MR. McENTIRE: (Continuing)

7 Q Special Agent Ribail, one of the policies that you're  
8 supposed to do or follow is to instruct witnesses not to  
9 communicate with other witnesses. We've talked about this.

02:17:23 10 A In this context, I take that as, yes, if I show you  
11 something, and then I'm going to show somebody else something  
12 immediately, that you two should not speak in between, yes.

13 Q Perfect.

14 So building on that, so there's a recognition there that  
02:17:43 15 instructing, for example, JV not to immediately leave the lineup  
16 and go and talk to his wife, NV, would be a policy worth  
17 following.

18 A Yes.

19 Q And that is an influence that could happen on NV that  
02:18:01 20 occurs after the lineup is done.

21 A I'm sorry. If JV told NV something after JV reviewed it  
22 but before NV reviewed it?

23 Q Correct.

24 A Yes. Absolutely.

02:18:16 25 Q So in that case, there is a policy that helps control

1 outside information that occurs after that individual's lineup.

2 MR. BURSON: Objection. The question is vague without  
3 referencing the direction of the information. Is it coming from  
4 the person who just took the lineup, going to the person who  
02:18:33 5 hasn't taken the lineup ...

6 THE COURT: If you'd clarify the question.

7 MR. McENTIRE: Certainly.

8 BY MR. McENTIRE: (Continuing)

9 Q If you are conducting a lineup on JV -- okay? -- and that's  
02:18:46 10 the first lineup that you've administered, you would agree one  
11 of the instructions you should provide JV is to not speak with  
12 other witnesses.

13 A Yes, about what they did. Yes.

14 Q And the reason that you would provide that instruction is  
02:19:05 15 the concern that JV could then leave that lineup, walk over to  
16 his wife, NV, and provide information on what occurred.

17 A Yes.

18 Q Before she comes and does the lineup.

19 A Yes.

02:19:18 20 Q So the FBI policy of not speaking to other witnesses is  
21 meant to protect against a taint that occurs after that  
22 witness', JV's, lineup.

23 A Yes.

24 MR. BURSON: Objection; vague. Taint of which lineup,  
02:19:39 25 Your Honor?



1 THE COURT: Overruled.

2 MR. McENTIRE: I apologize.

3 BY MR. McENTIRE: (Continuing)

4 Q Protects future witnesses' lineups.

02:19:47 5 A Yes.

6 Q You would agree that social media is -- let me rephrase  
7 that.

8 Special Agent Ribail, I'm pulling back up, this is Defense  
9 Exhibit 1011 dash -- 1011, which has been previously admitted.  
02:20:41 10 This is the 2013 FBI policy.

11 A Okay.

12 Q I'm referring you to Section 3.8 dealing with photographic  
13 lineups, and I'm reading the highlighted section.

14 (Reading): The primary objective of these procedures are  
02:21:08 15 to minimize suggestiveness by ensuring nothing is said or done  
16 by the FBI to distinguish the suspect's photograph from other  
17 photographs?

18 Correct?

19 A That you read that correctly? Yes.

02:21:20 20 Q And immediately before that (reading): The investigator --  
21 I'll highlight this for ease. (Reading): The investigator or  
22 administering agent, if not the lead investigator, must conduct  
23 the photographic lineup in a nonsuggestive manner conducive to  
24 obtaining accurate identification or nonidentification results  
02:21:49 25 based on the witness' memory, while minimizing the effect of

1 outside influences.

2 A Yes.

3 Q That's from the policy.

4 A Yes.

02:21:58 5 Q So the goal, again, as an agent administering lineups, you  
6 are trying to minimize outside influences.

7 A Yes.

8 Q And you would agree, as we've discussed before, that the  
9 environment could be an outside influence.

02:22:13 10 A Can you define "environment"?

11 Q For example, a wanted poster on a wall.

12 A Yeah.

13 Q Which is why you were making sure that there was nothing in  
14 or around where you were conducting the lineup on JV.

02:22:27 15 A Yes.

16 Q Other witnesses could be, again, this outside influences.

17 A Yes.

18 Q What you say and do as a lineup administrator could be  
19 outside influences.

02:22:39 20 A Yes.

21 Q And so there -- these are all categories of outside  
22 influences that you, as an agent, are trying to minimize.

23 A Yes.

02:22:56 24 Q Special Agent Ribail, would you agree that news is a form  
25 of outside influence?

1 A No.

2 Q You don't believe news is a form of outside influence.

3 A Not after the lineup is already administered, no. They've  
4 already -- they've already answered the question, they've  
02:23:09 5 already reviewed the photos, and -- and picked one or not picked  
6 one. And I'm ...

7 Q I want to pivot and bring up lineup 5033, which is the  
8 lineup you administered that day to JV, among the other  
9 witnesses. This is Defense Exhibit 1000.

02:23:45 10 Do you recognize this, Special Agent Ribail?

11 A Yes.

12 Q And directing your attention to 1000-3, this is the  
13 photograph that you included of James Cloud.

14 A Yes.

02:24:04 15 Q And this is what Spillman produced.

16 A That's my understanding, yes.

17 Q And he has short hair in this photograph. Based upon you  
18 looking at the photograph, would you agree he has short hair?

19 A Sure. I'd call it medium, but ...

02:24:26 20 Q And it creates, I guess, what I would describe as sort of  
21 a -- kind of a bump, rounded bump in his hair at the top.

22 A Yes.

23 Q This photograph does not depict James Cloud in any form of  
24 visible jail uniform.

02:24:47 25 A No.

1 Q There's no height markings behind him.

2 A No.

3 Q There's nothing that suggests that this was actually, in  
4 fact, a booking photo.

02:24:56 5 A Correct.

6 Q The photographs that you were showing, Special Agent  
7 Ribail, these were full-size, 8 1/2 x 11 photographs?

8 A It's -- the paper is 8 1/2 x 11.

9 Q Sure.

02:25:21 10 So the photograph is, as depicted here, slightly smaller  
11 than an 8 1/2 x 11-sized photograph.

12 A Yes.

13 Q Color?

14 A Yes.

02:25:37 15 Q And you indicated there are numbers in this lineup down at  
16 the bottom. This one indicating, under 1000-3, there's a "2"  
17 underneath James Cloud's photograph.

18 A Yes.

19 Q And if I go back one, to 1000-2, there's a "1" there.

02:25:56 20 A Yes.

21 Q And you indicated, testifying earlier today, that these  
22 numbers were essentially the printed order of the lineup.

23 A Yes.

02:26:10 24 Q It was also the order in which you provided the lineup to  
25 each of the individual witnesses.

1 A Yes.

2 Q Special Agent Ribail, as the lead investigator in this  
3 case, you had an opportunity to review other police reports  
4 involving other agencies that were doing investigation as well.

02:27:02

5 A Yes.

6 Q There are quite a few police reports.

7 A I'm sorry?

8 Q There are quite a few police reports.

9 A Yes.

02:27:14

10 Q You had an opportunity -- you yourself did not interview JV  
11 besides this lineup.

12 A Correct.

13 Q There was a different law enforcement officer that did  
14 that.

02:27:29

15 A Yes.

16 Q A Deputy Jay Heinz? Does that ring a bell?

17 A I don't recall.

18 Q From your review of the reports, Special Agent Ribail, you  
19 would agree that what the reports reflect from JV, as well as  
20 your discussions with JV, is that this incident that happened at  
21 JV's home elapsed over several minutes.

02:27:47

22 A It what over seven minutes?

23 Q It elapsed over several -- over several minutes.

24 A Yes.

02:28:05

25 Q From reviewing, again, police reports and speaking with JV,

1 JV indicated that he interacted with the individuals, spoke with  
2 them.

3 A The two people that carjacked the car?

4 Q Correct.

02:28:29 5 A Yes.

6 Q Spoke with not only the individual with the pistol that was  
7 holding it to his son's head.

8 A Yes.

02:28:39 9 Q He also interacted with the other individual with a  
10 shotgun.

11 A Yes.

12 Q In fact, the individual with the shotgun followed him into  
13 the house while he was exchanging keys.

14 A Yes.

02:28:48 15 Q The keys from -- initially he pulled the keys from a van?

16 A Yes.

17 Q But the individuals wanted a truck instead.

18 A Yes.

02:29:02 19 Q And so over this several-minute interaction, he's in close  
20 proximity to the individual with the shotgun who's following  
21 him.

22 A Yes.

23 Q And he was actually talking to him, the individual with the  
24 shotgun.

02:29:15 25 A I -- my -- based on reading the reports, yes, I know some

1 discussion. Yes.

2 Q According to JV, that the man with the shotgun was  
3 apologetic and continually told him he was very sorry for what  
4 he was doing.

02:29:32 5 A Yes.

6 Q Do you recall that from the reports?

7 A I recall that from the reports, yes.

8 Q JV also ended up negotiating with them essentially about  
9 where his son would sit in the truck.

02:29:41 10 A Yes.

11 Q Initially they wanted him inside the cab.

12 A Yes.

13 Q Later they agreed that the son could be in the bed of the  
14 truck.

02:29:51 15 A Yes.

16 Q So this was more than a fleeting encounter, if you will.  
17 We're not talking seconds. We're talking minutes.

18 A Yes.

19 Q And you'd agree that JV had a good opportunity to view both  
20 suspects that day.

02:30:11 21 A I -- personally I don't know, because I am not JV, but my  
22 opinion is actually, no, I don't agree with that. If somebody  
23 is following you, you can't see them. And number two, if  
24 somebody -- my opinion, based on my training and experience,  
02:30:32 25 that if somebody has a gun to my son's head, I'm going to be

1 focused on them more than somebody that's on my side or behind  
2 me. So I -- my opinion, which is only worth my opinion, is that  
3 JV more likely got a better look at the man holding the pistol  
4 to his son's head, my opinion.

02:30:55 5 Q You'd agree with the -- that the second individual followed  
6 JV inside the home, as we talked about.

7 A That's what the report says.

8 Q And the other individual didn't follow him inside with his  
9 son.

02:31:07 10 A That's correct. But you can't see somebody when they're  
11 behind you.

12 Q Is it your testimony that JV specifically told you exactly  
13 where the second individual was positioned during this  
14 interaction?

02:31:23 15 A No. I told you that's my opinion from reading the reports.

16 Q So this is not something that JV said. This is your  
17 opinion based on your review of the reports.

18 A It was -- it's my opinion based on you just saying that --  
19 it sounded like you were reading a report that said that the man  
02:31:39 20 with the shotgun followed him into the house.

21 Q Ah.

22 A Your words.

23 Q So this is not something based upon your discussions or a  
24 conversation with JV himself.

02:31:50 25 A That's correct.



1 Q Draw your attention to Defense Exhibit 1006.

2 There was some testimony about this earlier today. And  
3 this is something that you testified to that the Yakama Nation,  
4 be it the police department, I think, or the Tribal Police is  
02:32:30 5 what you were guesstimating had issued.

6 A Yes.

7 Q And based on the testimony, there was first a statement  
8 saying that everyone was arrested, and that was published  
9 sometime around 2 o'clock.

02:32:42 10 A Yes.

11 Q And then there was a clarification saying that, in fact,  
12 that was not true, and that came out shortly after 5 o'clock.

13 A Yes.

14 Q And that subsequent statement, that's where this bulletin,  
02:32:55 15 if you will, Defense Exhibit 1006, came from.

16 A Yes.

17 MR. McENTIRE: I don't believe, Your Honor, that this  
18 has been admitted.

19 BY MR. McENTIRE: (Continuing)

02:33:05 20 Q But just in case it hasn't, Special Agent Ribail, do you  
21 recognize this document?

22 A Yes.

23 Q Does it fairly and accurately represent the bulletin that  
24 was issued?

02:33:15 25 A Yes.

1 MR. McENTIRE: I'd move to admit this.

2 MR. BURSON: No objection.

3 THE COURT: It will be admitted. Counsel, I just want  
4 to be clear. The Government has its own exhibit of the same  
02:33:25 5 document.

6 MR. BURSON: That's correct, Your Honor. There's  
7 actually multiple overlapping exhibits.

8 THE COURT: Okay. If you all want to have multiple  
9 exhibits, that's fine.

02:33:35 10 (Defense Exhibit No. 1006 admitted into evidence.)

11 BY MR. McENTIRE: (Continuing)

12 Q On timing, Special Agent Ribail, you had indicated that  
13 this document, Defense Exhibit 1006, was something that JV had  
14 seen that day on June 9th.

02:34:15 15 A Yes.

16 Q In the afternoon.

17 A Yes.

18 Q And JV had actually contacted you as you were driving into  
19 his property or around his property to let you know about this  
02:34:28 20 identification.

21 A Yes.

22 Q This document that JV described seeing, he encountered it  
23 on the Yakama Nation's Facebook page?

24 A That's my understanding, yes.

02:34:57 25 Q And this appears to be on the Yakama Nation's letterhead.

1 A Yes.

2 Q And it contains two photos.

3 A Yes.

4 Q Tile photos, if you will.

02:35:05 5 A Sure.

6 Q A picture of James Cloud's front.

7 A Yes.

8 Q And side.

9 A Yes.

02:35:12 10 Q So these aren't the same size photos that JV had looked at  
11 with respect to the lineup.

12 A Correct.

13 Q These are smaller.

14 A Yes.

02:35:19 15 Q Quite a bit.

16 A Yes.

17 Q This photo does not contain a neutral background. You'd  
18 agree?

19 A I agree.

02:35:41 20 Q It contains a height marking, indicative of a booking  
21 photo.

22 A Is that a question?

23 Q It is.

24 A It does.

02:35:51 25 Q It also contains what appears to be -- James Cloud is

1 wearing jail garb.

2 A Yes.

3 Q And it contains a paragraph at the top. Starting out with  
4 (reading): Toppenish, Washington. Due to misidentification.

02:36:08 5 A Yes.

6 Q And there was some testimony about that earlier on the  
7 reason why the "due to misidentification" was inserted in there.

8 A You mean why this bulletin was put out in -- yes.

9 Q Correct.

02:36:30 10 And your testimony from earlier today is that was an error  
11 communicated somewhere along the way as information made it from  
12 the Oregon State Patrol or state police to various law  
13 enforcement agencies to the Yakama Nation that ultimately  
14 resulted in an incorrect bulletin being issued.

02:36:49 15 A Yes.

16 Q In this paragraph, "due to misidentification," it does not  
17 say "due to misidentification as a result of law enforcement  
18 error," correct?

19 A Correct.

02:37:04 20 Q So there's no clarification on who made the mistake. It  
21 just states "due to misidentification."

22 A You are correct. The first three words are "due to  
23 misidentification," yes. I'm not sure I understood the  
24 question.

02:37:25 25 Q And, again, it goes on to state, identifying James Cloud as

1 wanted for the reservation murders.

2 A Correct.

3 Q This information regarding the miscommunication along the  
4 way by law enforcement, that's not information that was public  
02:37:50 5 knowledge.

6 A No.

7 Q So it was not communicated to JV.

8 A Which part, that -- that they were in custody and they  
9 weren't? Or I don't know what --

02:38:03 10 Q Who made -- who made the mistake.

11 A Who made the mistake?

12 Q Correct.

13 MR. BURSON: Objection; calls for speculation.

14 THE COURT: I'm going to sustain it. If you could  
02:38:14 15 rephrase it to clarify the question.

16 BY MR. McENTIRE: (Continuing)

17 Q Special Agent Ribail, to your knowledge, JV was not aware  
18 of the miscommunication that had happened between the Oregon  
19 State Patrol and the Yakama Nation police. That's something  
02:38:36 20 that was within law enforcement.

21 MR. BURSON: Objection. I believe the final link in the  
22 chain indicated on the letterhead was the Confederated Tribes  
23 and Bands of the Yakama Nation, which is not the Yakama Tribal  
24 Police.

02:38:54 25 THE COURT: Overruled.

1 A Can you repeat?

2 BY MR. McENTIRE: (Continuing)

3 Q JV was not aware of the miscommunication that occurred  
4 between the various law enforcement agencies.

02:39:09 5 A I don't know what he knows and doesn't know.

6 Q Was that information that was made publicly available as to  
7 the internal error, to your knowledge as the lead investigator?

8 A I actually think it's painfully obvious that, yes, there  
9 was internal error, because there was a memo that went out that  
02:39:26 10 said that they're both in custody, and then it had to be fixed  
11 to notify the public that they weren't both in custody. So to  
12 me, that's very obvious, if I'm a member of the public, that an  
13 error was made. So I would say yes, he is aware.

14 Q Special Agent Ribail, were you present at the July 18th,  
02:40:00 15 2019, arraignment in this case?

16 A I believe so, but I -- I don't remember.

17 Q Do you remember a court hearing occurring over in Richland?

18 A I don't remember. I don't know if I attended or not.

19 Q Special Agent --

02:40:30 20 A Which -- it would have been --

21 Q -- Ribail, is it your practice, as the lead agent on -- in  
22 a case like this, to attend court hearings?

23 A Generally, but if I'm busy, which I would have been in that  
24 time frame, I wouldn't attend something that I didn't have a  
02:40:51 25 purpose, necessarily.

1 Q Do you remember a two-part hearing, one where the Clouds  
2 were arraigned on the superseding indictment, and then there was  
3 actually a substantive hearing before the Court immediately  
4 afterwards?

02:41:11

5 A I don't remember.

6 Q I'm going to pivot, Special Agent Ribail, to there was two  
7 identifications that you -- excuse me.

8 You did a second lineup procedure on a different individual  
9 by the name of LL that day, on June 9th.

02:42:04

10 A Yes.

11 Q And you -- where did that lineup occur?

12 A At his residence.

13 Q Did you employ the same techniques that you did at -- with  
14 the various individuals at JV's residence as you did with LL?

02:42:27

15 A Yes.

16 Q Including a sequential lineup procedure.

17 A Yes.

18 Q Did you use the same lineup photos?

19 A Yes.

02:42:47

20 Q Did you use the same blinded procedure that you described  
21 in terms of taking a stack and putting them facedown?

22 A Yes.

23 Q Did you use the same numerical 1 through 6 order that you  
24 described from before?

02:43:03

25 A Yes.

1 Q I'm going to draw your attention to Defense Exhibit 1013.  
2 Do you recognize -- and I'm going to scan through it so you  
3 can see it in total -- this lineup?

4 A Yes.

02:43:40 5 Q And this is lineup 5032.

6 A Yes.

7 Q And you administered this lineup on LL.

8 A Yes.

9 Q And he reviewed all of the photos.

02:43:51 10 A Yes.

11 Q And he did not identify anyone.

12 A Correct.

13 Q And this was the lineup containing Donovan Cloud.

14 A Correct.

02:44:03 15 Q I'm going to turn your attention to exhibit -- Defense  
16 Exhibit 1000. This is lineup 5033. Again, scanning through it.  
17 Do you recognize this lineup?

18 A Yes.

19 Q And you showed this lineup to LL?

02:44:21 20 A Yes.

21 Q And this is the lineup containing James Cloud.

22 A Yes.

23 Q And he did not identify James Cloud.

24 A Correct.

02:44:36 25 Q Here's a different lineup. This is lineup 5034. This is



1 one we haven't reviewed yet today. I'm going to scan through  
2 it. This is Defense Exhibit 1014.

3 Do you recognize this lineup?

4 A Yes.

02:44:54

5 Q And this is the lineup that you prepared, under 5034,  
6 containing Morris Jackson?

7 A Yes.

8 MR. McENTIRE: Your Honor, I'd move to admit Defense  
9 Exhibit 1014.

02:45:10

10 MR. BURSON: No objection.

11 THE COURT: It will be admitted.

12 (Defense Exhibit No. 1014 admitted into evidence.)

13 BY MR. McENTIRE: (Continuing)

14 Q Now, there was an identification on this lineup.

02:45:18

15 A Yes.

16 Q Specifically Photo No. 4, right here?

17 A Yes.

18 Q LL identified this individual as the blue-shirted male that  
19 shot him.

02:45:32

20 A To the best of my knowledge, that's my recollection, but if  
21 you would -- if I could review my 302, I could answer it better.

22 Q I'm pulling up Exhibit 1016, which is your 302. For lineup  
23 5034, (reading): LL stated that No. 4, Morris Jackson, possibly  
24 looks like the guy --

02:46:05

25 THE COURT: Counsel, this is an exhibit that you're

1 asking him to review to refresh his recollection?

2 MR. McENTIRE: Recollection.

3 THE COURT: And so he can do that without you reading  
4 that into the record.

02:46:15 5 BY MR. McENTIRE: (Continuing)

6 Q Special Agent Ribail, would you mind taking a look at this.

7 A Yes. I read it.

8 Q Okay. Is your recollection refreshed regarding this  
9 lineup?

02:46:26 10 A Generally, yes.

11 Q Okay. Based on what you recorded, did LL identify Morris  
12 Jackson as the person that shot him and had the shotgun?

13 A Yes.

14 Q Special Agent Ribail, as your -- lead investigator, you've  
02:46:51 15 participated in several different interviews over the course of  
16 this investigation?

17 A Yes.

18 Q You've also reviewed reports from several different  
19 witnesses as well.

02:47:06 20 A Yes.

21 Q Are there other witnesses that identified Morris Jackson as  
22 an individual with a shotgun that shot LL?

23 MR. BURSON: Objection; relevance.

24 THE COURT: Overruled.

02:47:27 25 A The short answer is I believe so, yes.

1 BY MR. McENTIRE: (Continuing)

2 Q Do you recall [REDACTED] saying that?

3 A I'd have to review my report.

4 Q I apologize. Do you recall EZ saying that?

02:47:54 5 A I'd have to review my report.

6 Q Do you recall Natasha Jackson saying that?

7 A Yes.

8 Q How long did you spend doing the lineups with LL?

9 A Maybe 20 minutes.

02:48:30 10 Q You were -- used the same Yakima County Sheriff's Office  
11 procedure, lineup procedure with LL as well?

12 A Yes.

13 Q I'm pulling up Defense Exhibit 1017.

14 Do you recognize this document?

02:48:46 15 A Yes.

16 Q Is this the lineup instructions that were provided to LL?

17 A Yes.

18 Q Are -- are these your notes?

19 A Yes.

02:48:52 20 Q Regarding his responses to the lineup.

21 A Yes.

22 Q Does this document fairly and accurately represent the  
23 original from that day?

24 A Yes.

02:49:03 25 MR. McENTIRE: Your Honor, I'd move to admit Defense

1 Exhibit 1017.

2 MR. BURSON: No objection.

3 THE COURT: It will be admitted.

4 (Defense Exhibit No. 1017 admitted into evidence.)

02:49:11 5 BY MR. McENTIRE: (Continuing)

6 Q You indicated that you provided these procedures, these  
7 same cautionary instructions to LL as well. You read them to  
8 him.

9 A Yes.

02:49:32 10 Q Did you provide an instruction to LL regarding contacting  
11 the media?

12 A I don't recall, but probably not.

13 Q Are you aware that shortly after this interview, this  
14 lineup procedure, that LL, in fact, did have contact with the  
02:50:06 15 press?

16 A Yes.

17 Q With the *Yakima Herald Republic*.

18 A Yes.

19 Q And that brings us to the January 27th, 2020, interview  
02:50:17 20 that you testified to briefly this morning.

21 A That brings us to?

22 Q To that interview.

23 You recall that interview.

24 A Yes.

02:50:29 25 Q And you had testified that you went out there to do some --

1 ask some follow-up questions.

2 A Correct.

3 Q And you were with Special Agent Jennifer Terami?

4 A Correct.

02:50:45 5 Q And Special Agent Terami did not prepare a report from that  
6 follow-up.

7 A She did. We share a report.

8 Q One report, two authors.

9 A Correct.

02:51:04 10 Q You mentioned earlier this morning that LL referred to the  
11 red-shirted male as James Cloud, which caught you off guard.

12 A Yes.

13 Q And it caught you off guard because during the previous  
14 lineup, he had not identified James Cloud.

02:51:24 15 A Yes.

16 Q And when you asked Special Agent -- or excuse me, when you  
17 asked LL to explain, you had recorded in your report that LL  
18 responded after seeing Cloud and hearing the name on the news.

19 A Yes.

02:52:14 20 Q Did you follow up with what news he was referring to?

21 A No.

22 Q Did you ask him whether or not it was on social media?

23 A No.

24 Q Did you ask him whether it was in the newspaper?

02:52:30 25 A No.

1 Q You moved on.

2 A Yes.

3 Q And you indicated that Special Agent Terami was also  
4 present.

02:52:44 5 A Yes.

6 Q Did Special Agent Terami ask -- she didn't ask, excuse me,  
7 whether or not LL saw this on the news or on the -- what news he  
8 was referring to.

9 A Not specifically. My recollection is it was like watching  
02:53:06 10 TV news. That's -- that's how I recall the answer.

11 Q But, again, she didn't ask specific follow-up questions  
12 either.

13 A She could have -- she could have. She could have said,  
14 "When you say the news, what do you mean?"

02:53:22 15 "Oh, on TV."

16 I don't know. Something like that. We were both  
17 interviewing. I don't know who asked what.

18 Q But that's not -- those specific follow-ups aren't  
19 documented in your 302.

02:53:33 20 A No. We didn't ask, like, what channel? Was it a day ago,  
21 a month ago, a year ago? No, we didn't ask any of that.

22 MR. McENTIRE: Your Honor, may I have just a moment?

23 THE COURT: Sure.

24 (Counsel conferring.)

02:54:23 25 MR. McENTIRE: No further questions, Your Honor.

1 THE COURT: Mr. Smith?

2 MR. SMITH: Pardon me, Your Honor?

3 THE COURT: Any questions for this witness?

4 MR. SMITH: Yes. Sorry. I was doing something else.

02:54:33

5 Your Honor, I do have some questions, but I want to clarify  
6 something.

7 The -- we have -- we filed a motion to join the motion  
8 to suppress the identification of LL. And I think -- and that  
9 is set for today. We also have our own motion to suppress,  
10 which is set for December 7th for a hearing on that, and it  
11 would probably involve testimony from -- from this agent at that  
12 time.

02:54:54

13 I was contacted by the U.S. Attorney, and I told him  
14 that we would not -- we had set our motion to suppress the  
15 identification for December 7th, our separate motion, and that I  
16 wouldn't be pursuing it today because it was set for another  
17 day. So I -- I don't want to -- I don't want to ask questions  
18 of this witness and then be prohibited from having -- having --

02:55:15

19 THE COURT: Two cracks at the apple, Mr. Smith?

02:55:37

20 MR. SMITH: I'm not trying -- I'm not trying to do that.  
21 In fact, I'm trying to avoid that, Your Honor. I don't want --  
22 I don't want the Court to -- to prohibit me from asking  
23 questions. I can -- I can -- I can save my questions for this  
24 agent for that motion for that date, every one of them.

02:55:54

25 The Government did, in its inquiry to this witness, did

1 kind of open up an area of -- of questioning. But then again, I  
2 can -- I'm happy to refrain from asking him questions with  
3 regard to our motion and ask him questions with regard to our  
4 motion that is set for today, which is that motion to join and  
02:56:15 5 would involve his interview of Mr. [REDACTED], LL.

6 THE COURT: Why don't you go ahead with your questions  
7 with regard to LL.

8 MR. SMITH: Thank you, Your Honor.

9 It's a -- it's a new world, Your Honor, when we can ask  
02:56:25 10 questions sitting down.

11 THE COURT: Yeah, I know. I know.

12  
13 CROSS-EXAMINATION

14 BY MR. SMITH:

02:56:40 15 Q The -- I'm going to try not to -- to repeat the questions  
16 that have been asked by -- by co-defendant's counsel here, Agent  
17 Ribail, but there may be a few questions that I ask you just  
18 because I need to have a little lead-in for the questions that I  
19 am asking you.

02:57:14 20 So, as I understand it, and what you reported, was that you  
21 administered a photo array to LL on June 9th.

22 Correct?

23 A Correct.

24 Q And in that photo array there was a -- there was a photo  
02:57:28 25 array that you identified as 5032, correct? You don't



1 remember --

2 A I don't have all of the numbers memorized. I'm sorry.

3 Q All right. Well, let's --

4 A I'm sure you guys prepare, and I'm sure you all memorize  
02:57:49 5 them all now, but this was a year ago for me.

6 MR. SMITH: Is --

7 THE COURT: Yes.

8 BY MR. SMITH: (Continuing)

9 Q I'm going to use a document of co-defendant's counsel.

02:58:08 10 MR. SMITH: I don't know how to turn it on, but if you  
11 do -- okay.

12 BY MR. SMITH: (Continuing)

13 Q This is Defendant's Exhibit 1016. I believe it has been  
14 admitted.

02:58:19 15 Do you recognize that document?

16 THE COURT: Hold on one second, Counsel.

17 MR. SMITH: I'll take care of that if it hasn't, Your  
18 Honor.

19 MR. McENTIRE: And, Your Honor, this was just used for  
02:58:36 20 refreshing recollection purposes.

21 THE COURT: Right.

22 MR. McENTIRE: This was not substantively admitted under  
23 a defense exhibit.

24 THE COURT: That's what I thought.

02:58:43 25 MR. SMITH: Say what?

1 THE COURT: It was not admitted, Counsel, but it was  
2 used to refresh the witness' recollection.

3 MR. SMITH: Then I'm going to ask him some questions  
4 with regard to it.

02:58:53 5 THE COURT: Sure.

6 BY MR. SMITH: (Continuing)

7 Q All right. So do you see that up on the screen? It's  
8 Defendant's identification 1016.

9 A Yes.

02:59:01 10 Q And do you recognize that document?

11 A Yes.

12 Q And is that a document that you created?

13 A Yes.

14 Q And you created that at or near the time of the events  
02:59:15 15 that -- that are reflected on it?

16 A Yeah, I can't see the date that was written, but ...

17 Q I'll show you. June 19th.

18 A Yes. Ten days later.

19 Q Now, did you -- I mean, you created that document on  
02:59:32 20 June 19th, but it is a record of the events that occurred on  
21 June 9th, correct?

22 A Yes.

23 MR. SMITH: All right. I move for the admission of this  
24 for the purposes of this hearing, Your Honor, 1016.

02:59:48 25 MR. BURSON: Your Honor, actually, I'm going to object.

1 Obviously hearsay is admissible in a hearing such as this, but  
2 where the witness is present and testifying, I don't know that  
3 the admission of this exhibit adds anything, and therefore would  
4 be irrelevant, unless -- I'll concede that if there is a prior  
03:00:10 5 inconsistent statement, we might have a different admissibility  
6 question, but --

7 THE COURT: I'm going to sustain that objection.

8 Counsel, maybe you can ask the question, and if he  
9 doesn't remember, then you can deal with the document.

03:00:20 10 MR. SMITH: Very well.

11 BY MR. SMITH: (Continuing)

12 Q Agent Ribail, you indicated that you couldn't recall the  
13 number of the photo array that included a photo of Donovan  
14 Cloud.

03:00:32 15 Is that correct?

16 A Of who?

17 Q Of Donovan Cloud?

18 A Correct.

19 Q Okay. And would you please review identification 1016, and  
03:00:42 20 tell me whether that refreshes your recollection as to the photo  
21 array, the number of the photo array.

22 A It doesn't help me remember which one Donovan Cloud was  
23 contained in.

24 Q All right.

03:01:23 25 THE COURT: Counsel, if you're looking for Exhibit 4 of

1 the Government ...

2 MR. SMITH: Pardon me?

3 THE COURT: Are you looking Exhibit 4, the Government's  
4 Exhibit 4?

03:01:31 5 MR. SMITH: I was -- actually, I was looking through  
6 the -- the defense exhibits, but it may be easier to use the  
7 Government's, Your Honor. Thank you.

8 THE COURT: Is that the one you're looking for?

9 MR. SMITH: I'm pretty sure.

03:02:07 10 And then I believe that this has been ...

11 THE COURTROOM DEPUTY: Counsel, yes, it has been.

12 MR. SMITH: Pardon me?

13 THE COURTROOM DEPUTY: It has been.

14 MR. SMITH: It has been okay. Thank you.

03:02:25 15 BY MR. SMITH: (Continuing)

16 Q I'm showing you, Agent Ribail, Government's Exhibit 4,  
17 which has been admitted in evidence.

18 And do you recognize that document?

19 A Yes.

03:02:34 20 Q All right. And does that refresh your recollection as to  
21 the lineup number that included a photograph of Donovan Cloud?

22 A Yes. Thank you.

23 Q All right. So -- and what number is that, please?

24 A 5032.

03:02:50 25 Q Okay. Now, moving back to the -- your -- the report of

1 your administration of the photo lineup to LL, identification  
2 1016, so -- now, understanding that No. 5032 includes the  
3 photograph of Donovan Cloud, you indicated that he did not  
4 identify anyone in that lineup, correct?

03:03:23

5 A Correct.

6 Q All right. And that's your -- your recollection; is that  
7 right?

8 A Yes.

03:04:22

9 Q Okay. The -- now, you -- you were -- when you administered  
10 the Lineup 5032, you were aware that LL had identified -- had  
11 given some physical description of two individuals, correct?

12 A Generally, no, because there were no reports written at  
13 that point, um, for me to read, for example. Um, there was  
14 some -- I know I -- information was coming from a lot of  
15 different places, from a lot of different agencies, interviewing  
16 different people, you know, including LL and others. So I don't  
17 recall what I knew of his physical description at that point.

03:04:54

18 Q Well, so are you saying that -- that when you -- when you  
19 prepared -- you prepared this lineup, and this is the 5032  
20 lineup, it was the same lineup, I think you testified earlier,  
21 that you -- that you administered to JV, correct?

03:05:19

22 A Correct.

23 Q So is that also true for when you created the lineup, you  
24 didn't -- you didn't have any physical descriptors of the  
25 individuals that you placed in the lineup?

03:05:35

1 A No. What I'm saying is I heard physical descriptors from  
2 different agencies doing different interviews. Um, that's how  
3 we made the lineups. But I don't know that any of them came  
4 specifically from LL, or maybe all of them came from LL. I  
03:05:52 5 don't recall where they all came from.

6 Q Okay. All right. Well, okay. Let me ask you this.

7 A To say it a different way, we developed names of suspects  
8 between Saturday and Sunday, and when we had the names, then we  
9 could get physical descriptions from the suspects' files,  
03:06:12 10 compared to what descriptions we had -- had received as well.

11 Q All right. So you're -- you're not -- you're saying that  
12 you were given a name, and then you attempted to determine the  
13 physical description of the people that you were given a name.

14 A No. I'm saying it came from both.

03:06:29 15 Q Yeah. Okay.

16 Well, what was the physical description -- descriptors that  
17 you used, independent of that which you attached to the name of  
18 the individual in the photo array?

19 MR. BURSON: I'm going to object, Your Honor. The  
03:06:44 20 witness earlier testified that the photo array was generated  
21 using the name of the suspect and then autopopulated from there  
22 so --

23 MR. SMITH: I agree. He seemed to contradict that with  
24 his testimony here.

03:06:57 25 THE COURT: I'm going to sustain the objection.

1 MR. SMITH: Sustain?

2 THE COURT: Yes.

3 MR. SMITH: Thank you, Your Honor.

4 BY MR. SMITH: (Continuing)

03:07:04 5 Q The -- when you -- after you had administered the photo  
6 array to -- to LL on June 9th, did you have any contact with LL  
7 between then and January 27th?

8 A I think so, yes.

9 Q Did you document your contact with LL in any report in that  
03:07:35 10 interim period?

11 A I don't believe so.

12 Q Is it -- is it in some notes that you have, that you --  
13 that you recorded your contact with LL?

14 A No.

03:07:47 15 Q So you're -- you're basing your testimony that you did have  
16 contact with LL between the time that the photo array was  
17 administered and the time that you interviewed him on  
18 January 27th, 2020, based upon your recollection.

19 A I think so. It could have been after January 27th. I know  
03:08:06 20 one time I was in that area, and I just stopped by to see if he  
21 was alive, how he was doing.

22 Q Okay.

23 A And probably to get a phone number to coordinate like  
24 victim witness contact.

03:08:20 25 Q Was anybody with you?

1 A I don't remember.

2 Q Um --

3 A But I'm saying it was more administrative to get a number  
4 so the victim witness specialist could reach him or something to  
03:08:37 5 that effect. It wasn't an interview.

6 Q Well, is it your practice to -- to not record contact with  
7 a critical witness in a homicide investigation?

8 A No, it's not my practice. My --

9 Q Is there anywhere where we can determine, or any document  
03:08:57 10 or memorandum that exists that we can determine, the date of  
11 your contact with LL and the content of that -- that contact?

12 A I doubt it.

13 Q The -- and as you sit there today, you don't recall whether  
14 that was prior to the January 27th interview or after, between  
03:09:25 15 now and then?

16 A I think it was before.

17 Q All right. When you and Agent Terami interviewed LL on  
18 January 27th, you didn't show him any pictures.

19 A No.

03:09:50 20 Q You didn't -- you didn't ask him about any prior  
21 identification that he had made.

22 A No.

23 Q The purpose of your contact with LL was what?

24 A It was to clarify information, um, from his other  
03:10:15 25 interviews.



1 Q Well, what -- what exactly was it about the -- his -- his  
2 identification or nonidentification on June 9th that you wanted  
3 to clarify?

4 MR. BURSON: Objection. That's not what the witness  
03:10:31 5 testified to.

6 THE COURT: Overruled.

7 MR. SMITH: I couldn't hear the objection, Your Honor.  
8 If it's overruled, it's okay.

9 THE COURT: Overruled. Go ahead.

03:10:41 10 MR. SMITH: All right.

11 A That was not the purpose.

12 BY MR. SMITH: (Continuing)

13 Q So was it that you wanted to clarify his identification of  
14 his identification?

03:10:59 15 A No.

16 Q I mean, you didn't need to clarify a nonidentification,  
17 correct?

18 A Correct, I think.

19 Q Well --

03:11:12 20 A It was a double negative. I'm sorry.

21 Q Well, you had testified earlier that if a person says --  
22 says -- doesn't identify a person, that you take that as a  
23 100 percent statement of certainty, non-ID; didn't identify  
24 anybody.

03:11:27 25 Correct?

1 A And, like I said, we were not there to clarify any  
2 identification or nonidentification. That's not why we went  
3 there.

4 Q Okay. You went there to interview him for what?

03:11:38 5 A About the events that happened on June 8th.

6 Q Now, when you went there on January 27th, if you went there  
7 to clarify his previous interviews, by other law enforcement?

8 A Yes.

03:12:05 9 Q So at that time you knew -- you did have his prior  
10 identification of at least two individuals, correct?

11 A We had reports at that point, yes.

12 Q All right. And did you -- did you --

13 A I'm sorry. I don't think I understood that last question.

14 Q I'm sorry. I can't hear you.

03:12:20 15 A I don't think I understood your last question or heard it  
16 correctly. We went to clarify that he -- his previous two --

17 Q I'll ask it again.

18 When you -- when you went to interview LL on January 27th,  
19 you said that you went there to clarify the identification --

03:12:40 20 A No, that's not what I said.

21 Q No?

22 A No.

23 Q You just wanted to ask him about the events.

24 A Yes.

03:12:47 25 Q And those -- and your questions were related to -- well,

1 let me ask you this: I'll back up.

2 THE COURT: Actually, why don't we do this. It's 3:15.  
3 This is when we typically take our afternoon break, and we'll do  
4 that again. We'll be on break for 15 minutes, and we'll be back  
03:13:09 5 at 3:30. Thank you.

6 THE COURTROOM DEPUTY: All rise.

7 (Recess taken: 3:13 p.m. to 3:30 p.m.)

8 THE COURTROOM DEPUTY: All rise.

9 (Call to Order of the Court.)

03:30:26 10 THE COURT: Please be seated.

11 Go ahead, Mr. Smith.

12 MR. SMITH: Thank you, Your Honor.

13 BY MR. SMITH: (Continuing)

14 Q So, Agent Ribail, during the interview on January 27th,  
03:30:44 15 2020, did you ever use the name Donovan Cloud?

16 A I don't believe so.

17 Q Well, do you know or do you not know?

18 A I would say "no."

19 Q Is there -- did you -- did you -- did -- did LL ever say  
03:31:09 20 the name Donovan Cloud?

21 A No, not that I recall.

22 Q The -- after you concluded your interview of LL on  
23 January 27th, have you -- have you interviewed him further?

24 A I'm sorry. I couldn't hear the end.

03:31:38 25 Q After January 27th, 2020, have you -- let me ask you it in

1 a better way.

2 Have you had any further contact with LL?

3 A I don't believe so.

4 Q Is there some reason why you answer "I don't believe so"  
03:31:51 5 versus "yes" or "no"?

6 A Uh, because I've done a lot of work in this case, and I  
7 can't remember every time I spoke to somebody, um, if -- for  
8 instance, I could point out with him we have an obligation for,  
9 uh, the victim witness people to reach out, so they want phone  
03:32:07 10 numbers or addresses, and sometimes if they can't get ahold of  
11 them, so they -- the victim witness could say, "Hey, Troy, would  
12 you call LL, and tell him to get ahold of me, because he's not  
13 answering my phone." So it's possible I reach out, and he  
14 happens to answer, and I say, "Call the victim witness person."

03:32:25 15 So it's -- I mean, there's possibilities that I could have  
16 spoken to him afterwards that I don't recall. But if I did,  
17 there was nothing substantive or else I would have written a  
18 report.

19 Q So at least to your best recollection, you haven't had any  
03:32:42 20 contact with him after the January 27th interview.

21 A Not of any substance, no.

22 MR. SMITH: I have no other questions.

23 THE COURT: No other questions?

24 MR. SMITH: No other.

03:32:53 25 THE COURT: Okay. Counsel?

1 MR. BURSON: Thank you, Your Honor.

2

3

REDIRECT EXAMINATION

4

BY MR. BURSON:

03:33:03

5

Q Actually, I'll start seated.

6

Agent Ribail, you work for a component of the Department of  
Justice, correct?

7

8

A Correct.

9

Q And that component is the FBI; is that right?

03:33:17

10

A Yes. Yes.

11

Q And the FBI has a director; is that right?

12

A Yes.

13

Q Okay. You've worked for the FBI for 17 years.

14

A Yes.

03:33:30

15

Q And the director of the FBI is appointed by the president,  
right?

16

17

A Yes.

18

Q So not the attorney general.

19

A Correct.

03:33:37

20

Q And I assume not the deputy attorney general.

21

A Correct.

22

Q Do you know how long director of the FBI is appointed for?

23

A Uh, I believe ten years.

24

Q That's correct.

03:33:48

25

Do you know who can fire the director of the FBI?

1 A The president.

2 Q Okay.

3 MR. BURSON: May I, Your Honor?

4 THE COURT: Yes.

03:34:12 5 BY MR. BURSON: (Continuing)

6 Q So this is Exhibit -- Defense Exhibit 1009. I assume  
7 you've become acquainted with this previously and over the past  
8 three hours.

9 A Yes.

03:34:25 10 Q Okay. Could you read for me where it starts "Memorandum,"  
11 the title of this?

12 A Sorry.

13 Q Go ahead.

14 A "Memorandum for Heads of Department Law Enforcement  
03:34:36 15 Components, All Department Prosecutors."

16 Q Okay. Okay. So you previously testified that you're a  
17 member of a law enforcement component.

18 A (No audible answer.)

19 Q Okay. Are you --

03:34:57 20 THE REPORTER: I didn't hear an answer.

21 THE WITNESS: I already forgot the question.

22 MR. BURSON: He's a member of the law enforcement --

23 THE WITNESS: Yes.

24 MR. BURSON: -- component.

03:35:00 25 THE WITNESS: Yes.

1 BY MR. BURSON: (Continuing)

2 Q You are not the head of your law enforcement component, are  
3 you?

4 A No.

03:35:08 5 Q Fair to say, not even close?

6 A No, not -- no.

7 Q And so was this memo addressed to you?

8 A No.

9 Q Okay. Now, the date of this memo was 2017, correct?

03:35:22 10 A Yes.

11 Q Okay. Can we agree it's impossible, then, that it was --  
12 well, that it was an authority underlying the 2013 guidance,  
13 considering it was issued after the time that the guidance  
14 was -- after the date on the cover of that guidance and after  
03:35:42 15 what is marked as the review date of that guidance which was  
16 2016?

17 A Yes.

18 Q Okay.

19 MR. BURSON: One moment, Your Honor.

03:36:10 20 THE COURT: Sure.

21 (Counsel conferring.)

22 BY MR. BURSON: (Continuing)

23 Q I'm showing you the same exhibit, Agent Ribail. And for  
24 the record, this has been highlighted by myself.

03:36:34 25 Could you read Footnote 1, please. Can you see it?

1 A I can't see it.

2 Q Oh. There you are.

3 A The entire or the highlighted?

4 Q You know, why don't we just read the highlighted.

03:36:49 5 A (Reading): Nothing in these procedures implies that an  
6 identification not done in accordance with them is unreliable or  
7 inadmissible in court.

8 Q So, Agent Ribail, I have a couple of clarifying questions  
9 here. I'm going to try and keep them in a sensible order, but  
03:37:33 10 it is going to jump around quite a little bit.

11 A Okay.

12 Q We talked about your training earlier or, actually, we  
13 talked about it and you talked about it with counsel for the  
14 defendants as well.

03:37:45 15 I want to be clear: You testified that you train new  
16 agents, correct?

17 A Yes.

18 Q On -- on lineups that you have trained --

19 A I've had new agents be part of lineups with me, yes.

03:37:57 20 Q Okay. And -- but that wasn't as an instructor per se.

21 A Correct.

22 Q Okay. So you've had agents conduct --

23 THE COURT: Counsel, do you have an exhibit that you're  
24 going to use at the Elmo or are you going to have a seat?

03:38:09 25 MR. BURSON: No, I can sit down.



1 THE COURT: Okay. Thank you.

2 BY MR. BURSON: (Continuing)

3 Q And so this was -- when you say "train new agents," you  
4 mean sort of like the equivalent of a field training officer at  
03:38:24 5 a local police department.

6 Is that right?

7 A Yes, that's what we are.

8 Q Okay. And is that how you were trained in lineups, aside  
9 from the formal training that you received from like the FBI  
03:38:35 10 academy and any follow-on training?

11 A Yes. When I got in the field, I had a training agent, and  
12 he taught me to do a lot of things, and I think one of those  
13 things was showing lineups as well.

14 Q Okay. We talked a lot about outside influences, and -- and  
03:38:57 15 how they can impact the lineup.

16 You testified you agree that outside influences can impact  
17 the lineup.

18 A Yes.

19 Q Can an outside influence, based on your training and  
03:39:14 20 experience, affect a lineup after the lineup has been  
21 administered?

22 A No.

23 Q We've agreed it can affect it while the lineup is being  
24 administered, correct?

03:39:27 25 A Yes.

1 Q And so during your administration of the lineup with JV,  
2 did you -- are you aware of anything in the surrounding area  
3 that could have influenced that lineup?

4 A No.

03:39:41

5 Q Okay. So there was no wanted poster hanging around,  
6 correct?

7 A Correct.

8 MR. BURSON: Could I just have one second, Your Honor?

9 THE COURT: Sure.

03:40:03

10 (Pause in proceedings.)

11 BY MR. BURSON: (Continuing)

12 Q You -- you testified earlier that you didn't record the  
13 time you spent at the Yakima County Sheriff's Office compiling  
14 the lineups, correct?

03:41:18

15 A That's correct.

16 Q And you testified it was one to two hours, right?

17 A Yes.

18 Q All right. Now, were you the individual -- you were the  
19 lead investigator. You've testified to that.

03:41:29

20 But were you the individual who actually sat down with the  
21 Spillman machine and created the lineups?

22 A No.

23 Q Okay. Who was that? That was Detective --

24 A Detective Cypher.

03:41:42

25 Q And your failure to record the amount of time that you

1 spent at the Yakima County Sheriff's Office, did that appear,  
2 during your administration of the lineup of JV, to have any  
3 impact on whether or not he identified anyone in any of the  
4 lineups?

03:42:03

5 A No.

6 Q You testified that earlier that you showed the photos to JV  
7 separately and one at a time, but you didn't record that  
8 specific detail on your 302 from this lineup.

9 Is that right?

03:42:18

10 A Correct.

11 Q During your administration of the lineup with JV, did that  
12 appear to impact whether or not he was able to identify anyone  
13 or not identify anyone?

14 A No.

03:42:31

15 Q You testified that the other family members of JV were  
16 sequestered and out of earshot, but you failed to document that  
17 on the 302 -- by the way, that you drafted after the lineup,  
18 correct?

19 A I couldn't hear the last part.

03:42:46

20 Q Sorry. That was a compound question.

21 Just for clarity purposes, this 302 was drafted, I believe  
22 it was six days after the lineup -- I'm sorry, four days after  
23 the lineup.

24 Correct?

03:43:02

25 A I don't remember. Something like that, yes.

1 Q Okay. Several days after the lineup?

2 A Several. JV's.

3 Q JV's, yes.

4 A Yes.

03:43:11 5 Q Okay. Now, on that 302, you didn't document the fact that  
6 the other family members were sequestered and out of earshot,  
7 correct?

8 A I'm sorry. I argued earlier that I did. I didn't note  
9 that anyone else was there because there was no one to note.

03:43:27 10 I -- if there was a parrot there, I probably wouldn't write  
11 there was a parrot. But ...

12 Q So is it your testimony, then, that their sequestration and  
13 being out of earshot was on the 302 by implication?

14 A Yes.

03:43:40 15 Q The failure to explicitly include that on the 302, which  
16 was drafted after JV's lineup, during your administration of the  
17 lineup, did that seem to impact whether or not he could identify  
18 or not identify anyone?

19 A No.

03:43:55 20 Q You testified that the photos were placed facedown on the  
21 hood of the car during the blinded technique. You failed to  
22 document that detail in the 302.

23 Do you think that affected his ability to identify or not  
24 identify anyone in the lineup?

03:44:12 25 A No.

1 Q Okay. Do you think that any of those things, those details  
2 that you either failed to document or failed to explicitly  
3 document, do you think any of them suggested in any manner who  
4 it was that JV should pick or not pick out of the lineup?

03:44:28

5 A No.

6 Q You decided to administer the lineup with JV on the same  
7 day that you did administer the lineup, correct? In other  
8 words, you hadn't decided on June 8th, "Hey, tomorrow I'm going  
9 to interview or I'm going to administer a lineup on JV," right?

03:45:01

10 A Correct.

11 Q Okay. And so you began the morning of June 9th, 2019,  
12 executing a search warrant. You testified to that earlier.

13 A Yes.

14 Q And you were there for several hours, correct?

03:45:13

15 A Yes.

16 Q And was it towards the conclusion of those several hours  
17 that you decided to go create a lineup and then administer it on  
18 JV?

19 A Yes.

03:45:26

20 Q Okay. And you went to the Yakima County Sheriff's Office  
21 to do that, right?

22 A Yes.

23 Q How far away was that from Medicine Valley?

24 A I'd say 30 minutes.

03:45:41

25 Q Okay. And that wasn't an FBI facility, correct?

1 A Correct.

2 Q Okay. How -- how close by was the nearest FBI facility?

3 A We're a little bit further. But we don't have Spillman.

4 Q Okay. Now, when you went to JV's residence, you conducted  
03:46:05 5 the lineup outside in the driveway, correct?

6 A Yes.

7 Q Outside. Was it windy or anything like that, breezy?

8 A I think it was a little bit on and off, because I remember  
9 having to make sure papers weren't blowing off the hood of the  
03:46:27 10 car.

11 Q And this was June in the middle of Medicine Valley, right?

12 A Yes.

13 Q It's a particularly open, large area, a lot of pastures --

14 A Yes.

03:46:36 15 Q -- things like that?

16 And it's sort of right there in the -- in the valley,  
17 correct?

18 A Yes.

19 Q Do you think using an audio recording device outside in the  
03:46:49 20 conditions, as you recall them, would have made a recording that  
21 was easy to hear later on?

22 MR. McENTIRE: Objection; calls for speculation.

23 THE COURT: Sustained.

24 BY MR. BURSON: (Continuing)

03:47:06 25 Q You testified earlier that other than your phone, you had

1 no video recording equipment, correct --

2 A Correct.

3 Q -- at JV's residence?

4 So, Agent Ribail, you testified with counsel for the  
03:47:23 5 defense about the value of an audio and/or video recording, and  
6 I believe you agreed with several statements regarding the value  
7 that an audio or video recording could have for a reviewer or a  
8 subsequent fact finder.

9 A Possibly, yes.

03:47:51 10 Q Do you think the presence of video recording equipment or  
11 audio recording equipment, or both, would have an impact on the  
12 lineup itself while you're administering the lineup?

13 A It could.

14 Q Okay. Are you -- in what direction?

03:48:19 15 A I guess, in my experience, some people, when they know that  
16 they're being videotaped, they get nervous, for example. So  
17 that would be an effect on somebody.

18 Q Okay. So we mentioned briefly there was a four-day delay  
19 between the drafting of the 302 documenting the lineup  
03:48:52 20 administration with JV.

21 That four-day delay, is that typical or common with the  
22 drafting of FBI 302s?

23 A Four days, I would say, is very normal.

24 Q Could you repeat that?

03:49:07 25 A I say, four days is normal.

1 Q Is normal --

2 A Yes.

3 Q -- is that what you said? Okay.

4 Agent Ribail, I'm showing you Government Exhibit 6, just  
03:50:19 5 briefly.

6 A Yes.

7 Q And Government Exhibit 7.

8 A Yes.

9 Q These were previously admitted. Actually, I am going to  
03:50:41 10 show you another exhibit.

11 Well, actually, those will have to do.

12 Those two Facebook posts, do you remember who it was that  
13 had posted those? In other words, what the letterhead was on  
14 the top, what entity?

03:51:39 15 A Yakama Nation.

16 Q Okay. The Confederated Tribes and Bands of the Yakama  
17 Nation, as it's stated on there?

18 A Yes.

19 Q Okay. Is that a separate entity than the Yakama Nation  
03:51:50 20 Tribal Police?

21 A Yes.

22 Q Okay. So does the chairman of the --

23 MR. McENTIRE: I'm going to object for foundation on  
24 understanding the nuance differences between the two.

03:52:06 25 THE COURT: Actually, if you could clarify that



1 question. Earlier testimony, it is the Court's recollection  
2 that you indicated that the Yakama Nation and the police, gave  
3 the impression, at least to me, that they were one in the same  
4 in terms of producing that bulletin. If that's not the case, I  
03:52:28 5 need clarification on that.

6 THE WITNESS: I don't recall exactly what I said, Your  
7 Honor.

8 THE COURT: Okay.

9 THE WITNESS: But what my recollection of what I  
03:52:38 10 intended to say was I think Yakama Nation Tribal Police were  
11 responsible for at least generating or wanting to put out the  
12 memo. But who actually physically put it -- that's not a good  
13 term, but put it on the Internet, onto Facebook, I don't know  
14 who physically did it in the end.

03:52:59 15 MR. BURSON: Okay. All right.

16 THE COURT: Go ahead.

17 BY MR. BURSON: (Continuing)

18 Q You also testified that with LL you may or may not have  
19 contacted him outside of the initial lineup and the January 2020  
03:53:17 20 interview. It could have happened before that January 2020  
21 interview; it could have happened after.

22 A Correct.

23 Q And that was for purposes of -- or it could have been for  
24 purposes of coordinating or helping the FBI's victim witness  
03:53:37 25 coordinator get in touch with LL.

1 A Yes.

2 Q Okay. If LL had said anything relevant to witness  
3 identification, would you have documented that in a 302,  
4 typically?

03:53:53

5 A Yes. If he said anything relevant to anything, I would  
6 have, yes.

7 MR. BURSON: Your Honor, I have no further questions.

8 THE COURT: Mr. McEntire?

9 MR. McENTIRE: Thank you, Your Honor.

03:54:24

10

11

RECROSS-EXAMINATION

12

BY MR. McENTIRE:

13

Q Special Agent Ribail, you testified that later on in the  
14 evening of June 9th, you and Detective Cypher were present at  
15 JV's residence collecting evidence. Later on that --

03:54:52

16

A Attempting to. Looking for, yes.

17

Q Looking for evidence.

18

A Yes.

19

Q And that he had flagged you down.

03:55:04

20

A Yes.

21

Q And when he had flagged you down, he wanted to talk to you  
22 about an update or some information that he wanted to provide to  
23 you.

24

A At that point I didn't know why he flagged us down.

03:55:22

25

Q So you stopped to speak with him.

1 A Yes.

2 Q And he indicated that he had come across something on  
3 Facebook, correct?

4 A Yes.

03:55:40 5 Q And it was --

6 MR. McENTIRE: May I please have it switched over to the  
7 port over here?

8 BY MR. McENTIRE: (Continuing)

9 Q And he advised you that he had come across this Defense  
03:56:03 10 Exhibit 1006, and -- and seen this, and he wanted to update you  
11 that this was, in his opinion, the individual that he had saw  
12 the day before.

13 A Yes.

14 Q And that he was 100 percent certain, according to what you  
03:56:17 15 had documented.

16 A Yes.

17 Q And did you interpret that as essentially a statement of  
18 certainty?

19 A My opinion, yes. I am not -- I am not JV, but that's how I  
03:56:34 20 took it.

21 Q A certainty regarding information that had caused him to  
22 reverse what he had told you earlier that day.

23 A I don't --

24 MR. BURSON: Objection, Your Honor. He had told him  
03:56:47 25 that day that he didn't identify anybody in the lineup. That's

1 different than identifying a totally different picture.

2 THE COURT: Counsel, we already -- we already went  
3 through this. Counsel didn't really go into this, so I don't  
4 know why we're rehashing stuff that wasn't on --

03:57:01

5 MR. McENTIRE: Certainly, Your Honor. I'll keep my  
6 questions focused on the questions of outside influence that  
7 came up on redirect.

8 THE COURT: Okay. Thank you.

9 BY MR. McENTIRE: (Continuing)

03:57:11

10 Q You testified on redirect that the cautionary instructions  
11 that you provide aren't designed to mitigate influence that  
12 occurs after a lineup.

13 A Yes --

14 MR. BURSON: That's --

03:57:29

15 A -- generally.

16 Let me clarify. Yeah, I don't know that that's what I  
17 testified to, but we did discuss that some things can't affect a  
18 lineup once it's done.

19 BY MR. McENTIRE: (Continuing)

03:57:41

20 Q To narrow this down, do you agree that there's a difference  
21 between influencing the lineup and influencing an  
22 identification?

23 A What's an identification?

24 Q After someone reviews a wanted ad and changes their mind.

03:57:57

25 A So -- okay. So now you defined that, what -- can you

1 repeat the question?

2 Q Sure.

3 Would you agree that there is a difference between  
4 influencing a lineup and influencing an identification?

03:58:18 5 A I honestly don't know how to answer that, because like if  
6 you're referring specifically to this, I'm not involved, I'm not  
7 there to influence. So I'm not sure I understand the question  
8 again.

9 Q The cautionary instruction included in the FBI's policies  
03:58:35 10 to caution someone against contacting the media has to do with  
11 not influencing their identification.

12 A I don't -- the -- that is not our policy. When our policy  
13 says don't contact the media, that's to go -- intended -- my --  
14 my understanding from my training and experience, is that, uh,  
03:58:57 15 any of these witnesses should not -- we're asking them not to go  
16 contact the media, to go give a statement to the media, not that  
17 they can't ever use their phone. I mean, if I understand your  
18 point of view, our policy would -- would say that JV should not  
19 have looked at his phone for the last 15 months, or whatever  
03:59:16 20 it's been now. We're not asking people to do that. They're not  
21 jurors sitting in a trial.

22 Q You would agree that after JV viewed this wanted poster  
23 involving James Cloud, he wanted to tell you that he had -- he  
24 changed what he told you earlier when he -- when the lineup was  
03:59:52 25 administered.

1 A He didn't change anything.

2 MR. BURSON: I'm going to object, Your Honor. He's not  
3 changing -- JV is not changing what he told him. It was a  
4 lineup where he didn't make an identification, and then he  
04:00:01 5 recognizes someone later on. That's not reversing what was  
6 said.

7 THE COURT: Sustained.

8 BY MR. McENTIRE: (Continuing)

9 Q You testified earlier this morning that when JV had  
04:00:16 10 contacted you, he had indicated he was frustrated that this  
11 wanted poster was not shown to him because it was a better  
12 representation of James Cloud.

13 MR. BURSON: Objection; outside the scope of redirect.

14 THE COURT: Sustained.

04:00:36 15 MR. McENTIRE: No further questions, Your Honor.

16 THE COURT: Mr. Smith?

17 MR. SMITH: No, thank you. No, Your Honor. Thank you.  
18 Nothing.

19 THE COURT: Very well, sir. Thank you for your  
04:00:47 20 testimony. At this point you're excused.

21 THE WITNESS: Thank you.

22 THE COURT: We have until 5:00. Do we have another  
23 witness?

24 MR. BURSON: We do, Your Honor. We could probably  
04:00:58 25 complete direct in that amount of time.

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1 THE COURT: Okay. Sounds good. Let's get started.

2 (Witness approached.)

3 MR. BURSON: Government calls Detective Michael Williams  
4 with the Yakima County Sheriff's Department, Your Honor.

04:01:40 5 THE COURT: Thank you. And we're going through our new  
6 procedure here, so bear with us a minute.

7 (Pause in proceedings.)

8 THE COURTROOM DEPUTY: Raise your right hand, please.

04:02:12 10 MICHAEL EDWARD WILLIAMS,  
11 called as a witness on behalf of the Plaintiff, having first  
12 sworn or affirmed, testified under oath as follows:

13 THE WITNESS: I do.

14 THE COURTROOM DEPUTY: Okay. You can remove your mask  
04:02:27 15 while you're testifying. There's a water there; make sure you  
16 take it with you when you leave.

17 And if you will state your full name for the record, and  
18 spelling your first and last name.

19 THE WITNESS: Michael Williams. I'm sorry.

04:02:39 20 THE COURT: And you can remove your mask or you can keep  
21 it on, whatever makes you most comfortable. But go ahead.

22 THE WITNESS: Michael Edward Williams; M-I-C-H-A-E-L.

23 THE COURT: Go ahead, Counsel.

24 MR. BURSON: Thank you.

04:02:52 25

DIRECT EXAMINATION

BY MR. BURSON:

Q And it's Detective Williams, correct?

A Yes.

Q And who do you work for, Detective Williams?

A Yakima County Sheriff's Office.

Q How long have you worked for Yakima County Sheriff's Office?

A Um, this December will be six years.

Q Okay. And how long have you been a detective with Yakima County Sheriff's Office?

A Um, almost two years.

Q Okay. So relatively new to being a detective.

A Yes.

Q When you became a detective, did you receive any training above and beyond what you had received as, I assume, a patrolman before then?

A I, uh, had some. A homicide investigation class, uh, a Reid investigation -- interview investi -- class.

Q Okay.

A I've taken the, um, child forensic interview class. There's been a few others; I just really can't recall off the top of my head right now.

Q Okay. And what about lineup training, either on the job, by observing other people's or formal training? Did you receive



1 formal lineup training?

2 A No formal training. From what I recall, this is, um,  
3 something that was probably shown to me through my field  
4 training officer, and that was it.

04:04:25 5 Q Okay. And how many lineups do you think you've conducted  
6 during your time with Yakima County Sheriff's Office?

7 A Maybe five to ten at the most. Closer -- closer to five, I  
8 would say.

9 Q Okay. All right. So on June 8th of 2019, were you  
04:04:51 10 involved in an investigation or assisting in an investigation  
11 out of Medicine Valley in White Swan?

12 A Yes.

13 Q Okay. In what capacity were you assisting with the  
14 investigation?

04:05:04 15 A Um, well, I was called on -- into service by my sergeant.  
16 Um, he advised that he had, um, multiple victims out in that  
17 area, and at least two crime scenes. So I was instructed to,  
18 um, go to the sheriff's office to central, um, in Yakima, and  
19 get the crime scene van, um, which I then took out to the second  
04:05:39 20 scene, which was the pickup truck, a black pickup truck, I  
21 believe.

22 Q Okay. So where a black pickup truck was on the side of the  
23 road?

24 A Correct. I don't remember the name of the road at this  
04:05:52 25 time, but ...

1 Q Okay. And how long on June 8th were you out at White Swan  
2 providing this assistance?

3 A Um, that first -- that first day it was -- gosh, I don't  
4 remember exactly. It was all -- all evening I'm sure.

04:06:12 5 Q Okay. Were you working that Saturday or were you --

6 A No.

7 Q You were working. Did you start the day working?

8 A It was my day off, yeah.

9 Q And you were called in even though it was your day off?

04:06:25 10 A Correct.

11 Q How many detectives at the time were working at the Yakima  
12 County Sheriff's Office?

13 A Um, that day or just as a whole?

14 Q As a whole.

04:06:36 15 A Um, we have six detectives; three in the upper valley,  
16 three in the lower valley, and one detective sergeant.

17 Q Okay. Of those six detectives -- and we'll go ahead and  
18 include the detective sergeant as well -- how many were called  
19 out to Medicine Valley?

04:06:52 20 A I believe it was three plus the -- plus the detective  
21 sergeant. There may have been four plus the sergeant, but I  
22 think it was three.

23 Q Okay. And on June 9th the following day, did you return to  
24 Medicine Valley to assist?

04:07:12 25 A Yes.

1 Q Okay. Was it in a similar capacity as June 8th?

2 A Similar, yes.

3 Q Okay. What was the last day that you -- let me rephrase  
4 that.

04:07:27

5 After June 9th, 2019, did you continue to assist in the  
6 investigation of the murders out at White Swan?

7 A Um, and that was the --

8 Q So it would have been -- June 9th, 2019, was a Sunday.  
9 After that day, did that conclude your planned assistance in the  
10 Medicine Valley murders?

04:07:52

11 A Planned assistance.

12 Q Yes.

13 A Yes.

14 Q So come Monday, come Monday morning when you came to work,  
15 were you still working on the Medicine Valley murder case?

04:08:02

16 A Um, I may have been finishing a report but other than that,  
17 no.

18 Q Okay. Now at some point --

19 MR. BURSON: And I'd like to sidestep here and make a  
20 quick clarification, primarily for the benefit of the Court, but  
21 also counsel for the defense.

04:08:21

22 In the Government's briefing, we indicated that a  
23 certain witness in this case, EZ, arrived at Yakima County  
24 Sheriff's Office at her own volition. Following the  
25 Government's briefing, and, in fact, quite recently, we became

04:08:37

1 aware that she was actually called in. So there will be an  
2 inconsistency in the testimony preceding this and the  
3 Government's prior briefing regarding EZ.

4 THE COURT: Go ahead.

04:08:54 5 MR. BURSON: Thank you, Your Honor.

6 BY MR. BURSON: (Continuing)

7 Q So Monday, June 20th, 2019, were you working?

8 A Yeah.

9 Q Where did you report that day?

04:09:01 10 A I just went to my own office desk.

11 Q Okay. At some point you interviewed someone with the  
12 initials EZ; is that right?

13 A Correct.

14 Q How was it -- and that took place at the Yakima County  
04:09:15 15 Sheriff's Office?

16 A Yes.

17 Q How was it that EZ came to arrive at the Yakima County  
18 Sheriff's Office?

19 A Um, at some point early in my shift, I was called by --  
04:09:26 20 excuse me -- I was called by a CPS caseworker. Um, she informed  
21 me that, um, EZ was, um, the subject of one of her  
22 investigations, and -- um, I don't know if you want me to go  
23 into that --

24 Q Okay.

04:09:49 25 A -- that case.

1 Q All right.

2 A But I -- I came to have EZ as another case assigned to me  
3 as a CPS follow-up.

4 Q Okay. So --

04:10:00 5 A So --

6 Q Just to clarify for the record, CPS stands for Child  
7 Protective Services --

8 A Correct.

9 Q -- right?

04:10:07 10 And they called you and asked you to work this case  
11 involving EZ?

12 A They basically called me to, as is typical when I get a CPS  
13 referral, um, whether it -- it could be all types of cases, but  
14 in this case, I believe it was a child endangerment. Um, so she  
04:10:29 15 called me, um, you know, introduced herself, and said, "This is  
16 a case I believe that was activated to you. Um, I was wondering  
17 if you could get into contact with EZ and interview her."

18 And I had just received this -- this case; it had just been  
19 activated to me. I don't even think I knew it was activated to  
04:10:53 20 me yet. And so I said sure. Um, and that's how she came about  
21 coming to our office, EZ. I placed a call to her and asked her  
22 to so that I could interview her reference to that case.

23 Q Okay. So the purpose of you calling her and then  
24 interviewing her that day was this CPS referral.

04:11:12 25 A To my memory, yes, that was the sole purpose.

1 Q Okay. So were you calling her in to interview her about  
2 the Medicine Valley homicides two days prior?

3 A At that point, no. At that point it was for the CPS.

4 Q Okay. Now, at some point you did -- at some point you did  
04:11:38 5 discuss the Medicine Valley murders with her, correct?

6 A Yes.

7 Q And the fact that she had been at the Cagle residence in  
8 White Swan, correct?

9 A What happened is once she arrived, um, I don't know exactly  
04:11:53 10 who found out that -- one of the other detectives found out that  
11 she was coming to our office, um, said, "Hey, we need to  
12 interview her for this other incident in Medicine Valley." So  
13 that's how that came about.

14 Q Okay. Was the CPS referral related to the events --

04:12:17 15 A Yes.

16 Q -- at Medicine Valley two days prior?

17 In what way?

18 A Um, EZ, when she arrived at the Medicine Valley location,  
19 she was in the rear of a pickup truck, um, with her, I believe,  
04:12:33 20 at the time six-month-old child. Um, and the -- the reason for  
21 the referral was, you know, to discuss this with her and to see,  
22 you know, did she know that she was, uh, going to this residence  
23 to do what? What was she bringing this child to -- with her to  
24 this residence for? What was her reasoning to go there?

04:13:02 25 Q Okay. Now, you then conducted an interview with EZ,

1 correct?

2 A I did.

3 Q Okay. And was anyone else in -- in the interview room?

4 A Detective McIlrath.

04:13:16 5 Q Okay. Was the interview room equipped with audio and  
6 visual equipment?

7 A Yes.

8 Q Okay. Was that activated for the duration of this  
9 interview?

04:13:27 10 A Yes.

11 Q Okay. You were provided a copy by the U.S. Attorney's  
12 Office of that video that they obtained from your office,  
13 correct?

14 A Yes.

04:13:38 15 Q Have you reviewed that prior to this hearing?

16 A Yes.

17 Q Does it accurately depict the video?

18 A Yes.

19 Q Okay.

04:13:47 20 MR. BURSON: Your Honor, I know I haven't gone through  
21 all of the formalities typically associated with introducing a  
22 video, but since it's been introduced by, I believe, both  
23 parties at this point, I'm going to move to admit it.

24 THE COURT: Is that Government's 10?

04:14:02 25 MR. BURSON: It is, Your Honor, yes.

1 THE COURT: Any objection?

2 MR. McENTIRE: None from James Cloud.

3 THE COURT: It will be admitted.

4 Oh, sorry.

04:14:13 5 MR. SMITH: No, Your Honor.

6 THE COURT: It will be admitted. Sorry about that.

7 (Government Exhibit No. 10 admitted into evidence.)

8 BY MR. BURSON: (Continuing)

04:14:23 9 Q So the primary purpose of you interviewing EZ that day was  
10 related to the CPS referral.

11 A The primary purpose became the Medicine Valley incident at  
12 that point. Uh, when I spoke to her about the CPS referral, um,  
13 that was -- that conversation was fairly brief. Um, I -- I  
14 think looking at it -- looking at the referral and speaking to  
04:14:54 15 her for -- for a few moments, I realized that it was going to be  
16 really difficult to show that she had that intent, uh, knowing  
17 that these things might happen and so on, and that she -- enough  
18 to prove that she put her child in danger recklessly or however,  
19 you know, was going to be really hard to do, so that  
04:15:18 20 conversation didn't last very long.

21 Q Okay. And so let's back up a little bit.

22 When the interview started, what was the discussion about?

23 A The Medicine Valley incident. From what I recall, that's  
24 how -- that's where the conversation -- conversation started.  
04:15:39 25 That was the topic --



1 Q Okay.

2 A -- from what I recall. I don't remember mentioning  
3 anything about, you know, the child endangerment or anything  
4 like that in the beginning.

04:15:51

5 Q Okay. At some point -- at some point you decided to  
6 administer a lineup; is that right?

7 A Yes.

8 Q And why did you decide to administer a lineup?

04:16:17

9 A Um, another detective asked. I believe it was Detective  
10 Cypher, but I'm not positive about that. I -- I believe  
11 Detective McIlrath spoke with that person who was -- most likely  
12 was Detective Cypher, and he asked that we do that.

13 Q Okay. And did you have a lineup compiled already then?

14 A Not at that point, no.

04:16:39

15 Q So between you and Detective McIlrath, I believe is --

16 A McIlrath.

17 Q -- which one of you compiled the lineup that would  
18 eventually be administered to EZ?

19 A Detective McIlrath did.

04:16:57

20 Q And did he prepare the lineup in the interview room or did  
21 he have to leave the interview room to do that?

22 A He left the room, and, to my best recollection, that's when  
23 I spoke with EZ about the CPS.

24 Q Okay. Do you recall how long Detective McIlrath was  
25 outside the interview room?

04:17:16

1 A I don't know exactly, but I would estimate ten minutes or  
2 more.

3 Q Okay. And during this ten-minute-or-more period, what  
4 did -- I know you just testified it had to do with the CPS  
04:17:33 5 thing, but could you tell us generally the topics that were  
6 discussed with EZ during this ten-or-more minute period while  
7 Detective McIlrath was outside the room preparing the lineup?

8 A The topics that were discussed?

9 Q Yes.

04:17:47 10 A Um, why she went to that address; um, drug use; did she  
11 know that -- you know, is that the reason they went out there,  
12 because that was kind of the assumption; um, just things along  
13 those lines.

14 Q What was her demeanor like during this ten-minute period or  
04:18:15 15 so?

16 A Um, she was upset, but she was fairly composed. She was  
17 crying off and on, but she was able to speak pretty well and  
18 compose herself, but it was pretty obvious that she was upset.  
19 And she -- she had a wound to her back, um, that looked like a  
04:18:35 20 shotgun blast. That's what was told to us, and ...

21 Q And after ten-or-so minutes Detective McIlrath returned  
22 with the lineup?

23 A Yes.

24 Q I'm showing you what is marked as Government Exhibit 9.  
04:19:06 25 Do you recognize that cover --

1 A Yes.

2 Q -- cover sheet?

3 A Yes.

4 Q Can you see it?

04:19:17 5 A Yes.

6 Q Okay. Could you briefly tell us what -- what this cover  
7 sheet is?

8 A Um, that is a -- well, as it says on the top, it's  
9 instructions for a photographic lineup. So anytime you present  
04:19:30 10 a lineup, um, along with the photos, you're going to present  
11 this to the, uh, person who is receiving the lineup, and you're  
12 going to read that out loud to them and let them read it  
13 themselves and make sure they understand. And after they, um,  
14 say that they understand it, you're going to, you know, present  
04:19:52 15 the lineup to them. They're going to eventually sign the  
16 bottom. If they've selected a photo, they would indicate that  
17 in the bottom left corner. If they have not, they will not.

18 Q Okay. Do you recognize that marking there that I just  
19 circled (indicating)?

04:20:08 20 A Yes, my.

21 Q Okay.

22 A My -- my signature.

23 Q What is that?

24 A My signature.

04:20:13 25 Q Okay. And it looks like there's a date next to it

1 indicating that it was executed on June 10th, 1999.

2 Is that correct?

3 A I had messed up that "9".

4 Q Okay.

04:20:29 5 A That should be a "1", of course, but ...

6 Q All right. So June 10th, 2019, is what that should say?

7 A Yes.

8 Q Okay. And do you remember which lineup or who -- who this  
9 lineup was administered on?

04:20:46 10 A Um, I believe it was, um, on James.

11 Q No, but, I mean, who was the person that you were -- who --  
12 who were you showing this lineup to?

13 A Oh, EZ.

14 Q Okay. I'm going to flip through.

04:21:07 15 So you've seen all of the photos in this lineup before,  
16 correct?

17 A Yes. It's been a little while, but yeah.

18 Q Okay. So now, this lineup, now that you've seen all of the  
19 pictures, including all of the pictures that are included, this  
04:21:25 20 is the lineup that you showed to EZ on June 9th, 2019.

21 A I believe so, yes.

22 Q And it's in substantially the same form as it was back  
23 then.

24 A It should be, yes.

04:21:36 25 Q It should be or it is?

1 A I believe it is, yes, sir.

2 MR. BURSON: Your Honor, move to admit Government  
3 Exhibit 9.

4 MR. McENTIRE: No objection from James Cloud.

04:21:47 5 MR. SMITH: No objection.

6 THE COURT: It will be admitted.

7 (Government Exhibit No. 9 admitted into evidence.)

8 BY MR. BURSON: (Continuing)

04:21:53 9 Q So you testified you typically give the person  
10 instructions.

11 Did you or Detective McIlrath give instructions to EZ?

12 A I did.

13 Q Okay. Could you describe how you gave those instructions.

04:22:06 14 A I read this -- this lineup, uh, instruction page to her,  
15 and I explained to her that, um, you know, the important things  
16 were the person may or may not be in the -- in the photos, um,  
17 and, you know, that if she understood, that she'd mark on the  
18 bottom right-hand corner, and then I told her that she should  
19 read it herself, um, just to make sure that she understood.

04:22:31 20 Q Okay. And then she -- she executed on this front page here  
21 where it says, "Person Viewing Photo Lineup"?

22 A Yes.

23 Q Okay. So when Detective McIlrath came into the interview  
24 room, he handed -- sorry -- he had the lineups with him,  
04:22:49 25 correct?

1 A Yes.

2 Q Do you recall how many lineups he had?

3 A I believe four.

4 Q Okay. Do you remember which lineup this one, No. 5038, was  
04:23:00 5 of the four that you administered?

6 A That should be the first one that we administered.

7 Q Okay. And when Detective McIlrath came in with the photo  
8 lineup, what did he do with this particular photo packet?

9 A Um, I -- I believe he handed it to me first. I'm not  
04:23:21 10 positive without --

11 Q Okay. But as you recall, he handed it to you?

12 A I believe so.

13 Q And do you recall if you did anything with it prior to  
14 administering the lineup?

04:23:33 15 A Prior to giving it to EZ?

16 Q Yes, which we'll get to that.

17 A Um, I think the only thing I did was after I read the  
18 instructions to her, I checked to make sure that the, um -- that  
19 the last sheet, which has the subjects in each spot, to make  
04:23:52 20 sure that their names weren't -- to make sure that that page  
21 wasn't there, which has their name and their position and  
22 everything. This is generated through Spillman.

23 Q This lineup was generated using a Spillman system; is that  
24 right?

04:24:05 25 A Correct.

1 Q Okay. And --

2 A And it will have that page included, um, when it's printed  
3 off, and it will show each position and the name and the name  
4 number, which is their Spillman, uh -- Spillman-specific number  
5 for each person. So I wanted to make sure that I didn't hand  
6 that to her.

7 Q Okay.

8 A So I did flip through and check.

9 Q So you -- you looked at the photos prior to handing them to  
10 EZ to find that sheet or make sure it wasn't in there.

11 A Yeah, just to make sure that that wasn't in there. That  
12 would have been not good.

13 Q As you were doing that were you focusing on the photos?

14 A Focusing on them, no.

15 Q Okay. So were you making note of who was in there?

16 A No.

17 Q Okay. At the time, to the best of your recollection, at  
18 the time that you began actually administering the lineup, did  
19 you know which photo depicted the -- the suspect?

20 A I don't -- I don't think I did. I just -- after I just got  
21 it from him?

22 Q Yeah.

23 A No.

24 Q Okay. Now, when you began administering the lineup to EZ,  
25 what did you actually do with the photos, the six photos in this

1 particular lineup?

2 A When I -- I handed them to her. I don't know --

3 Q Did you hand them to her all at once?

4 A Yes.

04:25:29

5 Q Okay. We're going to take a small diversion here.

6 You've -- in between that lineup and now, you've become  
7 somewhat familiar with Yakima County Sheriff's Office's lineup  
8 policy or best practices?

9 A Yes, I have.

04:26:00

10 Q Are you aware that those policies recommend that the  
11 lineups be administered sequentially?

12 A I wasn't at the time, but --

13 Q You weren't at the time. You are now.

14 A Yes.

04:26:11

15 Q Okay. And so the reason --

16 THE COURT: Counsel, are you done with the Elmo?

17 MR. BURSON: I am, Your Honor. I'll probably come back  
18 to it.

19 THE COURT: All right.

04:26:22

20 BY MR. BURSON: (Continuing)

21 Q So you're aware of it.

22 A Yes.

23 Q But at the time you weren't -- you weren't aware of that  
24 best practice.

04:26:27

25 A I was not.



1 Q Okay. How long had you been a detective at that time?

2 A Um --

3 Q In June of 2019.

4 A I would say -- would that be five months, maybe?

04:26:47 5 Q Now, once EZ had the photos in her possession, what did she  
6 start doing with them?

7 A She started looking through them.

8 Q Okay. Was she looking through them one at a time?

9 A Yes.

04:27:00 10 Q At any point did she start comparing photos, anything like  
11 that?

12 A She just started looking through them one at a time, as I  
13 can remember.

14 Q As you recall?

04:27:09 15 A Right.

16 Q As you recall, did she identify -- did she point out --  
17 sorry, did she make any identifications in that photo array?

18 A Yes.

19 Q Okay. Do you recall which photo it was?

04:27:33 20 A Um, which -- which number?

21 Q Yes.

22 A Uh, it was the second, I believe.

23 Q Okay. Okay. And I'm showing you the cover sheet on  
24 Government Exhibit 9 again.

04:27:51 25 THE COURT: It's not showing up.

1 THE WITNESS: I don't have it up.

2 BY MR. BURSON: (Continuing)

3 Q Where it says "Photo Number Selected" with a number "2"  
4 handwritten there, is that indicating that a selection was made  
04:28:08 5 and that it was Photo 2?

6 A Yes.

7 Q Okay.

8 A She also made a notation on the photo itself.

9 Q Okay. And let's take a look at that.

04:28:21 10 This is Photo No. 2, correct (indicating)?

11 A Correct.

12 Q I mean, there's obviously a "2" at the bottom; is that  
13 right?

14 A Yes.

04:28:31 15 Q This handwriting here (indicating), whose handwriting is  
16 that, as you recall?

17 A It's her handwriting.

18 Q By "her," you're referring to?

19 A EZ.

04:28:39 20 Q And could you read that for us.

21 A Well, I've only got the first line, but it says (reading):  
22 Guy who shot Dennis.

23 Q How about that (indicating)?

24 A I can't really read what it says over the "Government  
04:28:54 25 Exhibit 9," but it says (reading): Guy who shot Dennis.

1 Q Okay. So you can't tell what this marking is here  
2 (indicating)?

3 A I can't.

4 Q Okay. Does it look similar to you, from what you can tell,  
04:29:13 5 to this mark here (indicating)?

6 A It does.

7 Q Okay. Do you recall if EZ made any remarks in reference to  
8 Photograph No. 2?

9 A She -- I don't recall exactly, but -- her -- her exact  
04:29:34 10 words, but she said something to the effect of "that's him" or  
11 "this is him," something like that, when she got to that second  
12 photo.

13 Q Okay. Do you recall --

14 MR. McENTIRE: I'm going to object as misstating what  
04:29:51 15 she said during the recorded interview.

16 MR. BURSON: I didn't --

17 THE COURT: Well, but -- hold on. Hold on.

18 MR. BURSON: -- understand that because of the mask, I  
19 think.

04:30:01 20 THE COURT: Overruled. That's his recollection at this  
21 point.

22 Go ahead.

23 BY MR. BURSON: (Continuing)

24 Q After she made the initial identification of the  
04:30:23 25 photograph, did she make any more comments after that in

1 returning to Photograph No. 2?

2 A I don't recall right now. I'd have to review the video  
3 again to --

4 Q I'm sorry?

04:30:36 5 A I'd have to review the video again to remember that. I  
6 don't remember at this point.

7 Q So you don't recall from your own memory.

8 A No.

9 Q So, Detective Williams, we're not going to go over the  
04:30:55 10 entire video with you, but there is a particular moment that I  
11 would like to ask you some questions about. And just for  
12 context sake, I think we'll start at a position of the video  
13 where I think you'll see that it appears as though the beginning  
14 of this lineup is being administered.

04:31:27 15 MR. BURSON: Can you switch us over, please?

16 THE COURT: Just for the record, you're playing  
17 exhibit ...?

18 MR. BURSON: This is Exhibit 10, Your Honor.

19 THE COURT: Thank you.

04:31:40 20 BY MR. BURSON: (Continuing)

21 Q So as you can see -- you can see that on your screen,  
22 Detective?

23 A Yes.

24 Q All right. And you can see, this is mostly for the benefit  
04:31:48 25 of the record, but the time stamp in the bottom of the video,

1 not the video player, is 13:47 and 17 seconds.

2 A Yes.

3 Q Oh, and can you identify the person the front side of this  
4 video with the red shirt?

04:32:10 5 A That is me.

6 Q That's you?

7 A With the red shirt, that's me.

8 Q Okay. And sitting across the table from you, that is?

9 A EZ.

04:32:31 10 (Whereupon a video clip was played.)

11 Q Let's pause it there for a second.

12 You previously testified about going through the lineup to  
13 check for the -- the sheet that Spillman produces that has  
14 identifying information on it.

04:32:40 15 Is that what you were doing in the last five seconds or so  
16 there?

17 A That's what I was doing right there, yes.

18 (Whereupon a video clip was played.)

19 THE COURT: Does this have audio?

04:33:04 20 MR. BURSON: It does, Your Honor, but we've been having  
21 some audio difficulties. I tried to work it out with court  
22 staff, but for some reason it's just not --

23 THE COURT: Okay.

24 MR. BURSON: -- very audible. I -- while we're on  
04:33:19 25 topic, it wasn't the Government's intent at any point during its

1 presentation today to play the entire video. We submitted it as  
2 an exhibit --

3 THE COURT: Counsel, I've watched the video --

4 MR. BURSON: Okay.

04:33:30 5 THE COURT: -- if that's what you're wondering.

6 MR. BURSON: Which is what I was asking. Since the fact  
7 finder has already reviewed the video, the Government doesn't  
8 intend on playing the whole video.

9 THE COURT: Okay. But I didn't know if you had  
04:33:42 10 questions for him on that. So that's why I was just letting you  
11 go ahead and ask your questions. But I have watched the video.

12 MR. BURSON: Thank you, Your Honor.

13 BY MR. BURSON: (Continuing)

14 Q So you've been watching this, Detective?

04:33:55 15 A Yes.

16 Q Okay. And it looks like she's starting to flip over the  
17 second page, right?

18 A I believe so.

19 Q Okay. While we're watching the video, I'd like you to pay  
04:34:08 20 attention to you specifically here.

21 (Whereupon a video clip was played.)

22 Q Okay. In the last few seconds of that video you handed --  
23 you moved the pen over to the side of the table; is that right?

24 A I just moved the pen, yes.

04:34:28 25 Q Okay. And I understand that this was in June of 2019.

1 Correct?

2 A Yes.

3 Q Do you know -- well, first of all, do you recall, if you  
4 hadn't seen the video, moving that pen?

04:34:45 5 A Do I recall what? I'm sorry.

6 Q If I hadn't shown you this video just now or you hadn't  
7 ever reviewed it for admissibility purposes, if I had asked you  
8 today, do you remember moving a pen during this lineup --

9 A I don't think so.

04:35:01 10 Q Okay. Now that you've seen the video, do you recall --

11 A I know exactly why -- why I moved the pen.

12 Q Okay. So why don't you tell us what you were doing there,  
13 what that action was with the pen.

14 A It's hard without audio, but to -- but what happened when  
04:35:19 15 she flipped the second photo, she -- like I said before, she  
16 said something -- not exact words, but she said something to the  
17 effect of, um, "this is the person." That's not what she said,  
18 but something to that effect. And I realized she did not --

19 MR. McENTIRE: And I'm got to object because that is  
04:35:39 20 misstating what occurred during the video, just for record  
21 preservation.

22 THE COURT: Okay. It's on the record.

23 MR. BURSON: Your Honor, I'm going to ask that prior  
24 inconsistent statements, if any --

04:35:52 25 THE REPORTER: I can't hear you.

1 MR. BURSON: I'm going to ask that prior inconsistent  
2 statements be reserved for cross-examination, since they're not  
3 actually objections.

4 THE COURT: Okay. That seems reasonable. Go ahead.

04:36:01

5 BY MR. BURSON: (Continuing)

6 Q All right. So, Detective Williams, I believe you were just  
7 explaining what the movement of the pen was.

04:36:19

8 A Um-hmm. When I moved the pen, she had made some sort of  
9 statement, um, as to -- as to identifying what photo she was --  
10 you know, she was identifying the person in the photo. I  
11 realized she did not have a pen. She needed a pen to make  
12 her -- make a mark or sign her name, whatever she was going to  
13 do, so I gave her -- I put the pen down. That's as simple as it  
14 is.

04:36:33

15 Q Was your intent at the start of this lineup to have her  
16 indicate if she made an identification by making a mark on the  
17 photo itself?

18 A Um, yes.

04:36:52

19 Q And had she -- and I know we can't hear it in the video,  
20 unfortunately, but to the best of your recollection, had she  
21 already made a statement indicating identification prior to you  
22 moving the pen?

23 A She made some sort of statement, yes. I just can't  
24 remember exactly what she said.

04:37:06

25 Q Okay.



1 (Whereupon a video clip was played.)

2 BY MR. BURSON: (Continuing)

3 Q Okay. So, Detective Williams, I know you can't really  
4 hear, but now that you've seen the footage of it, to the best of  
04:38:02 5 your recollection, is that the point that we just watched, where  
6 she makes her mark and that identifying statement on Photo  
7 No. 2?

8 A The whole -- the whole sequence, yes.

9 Q Okay. All right. And am I correct in saying that  
04:38:22 10 following this, it appears that she does have a pen on her  
11 right-hand side, next to the water bottle there?

12 A It looks like it.

13 Q Okay. And to the best of your recollection, did she retain  
14 a pen of some sort for the -- for the remainder of the four  
04:38:39 15 lineups, as best you recall?

16 A I believe so. I ...

17 Q Now, as best as you recall, did she make any other  
18 identifications that day in the other lineups?

19 A I believe she identified, uh, one more person in the next  
04:39:08 20 lineup. I don't recall who that was at this time. Um, and she  
21 was presented two more, and I believe she was unable to make  
22 identification on those two.

23 MR. BURSON: Your Honor, if the Court will bear with me,  
24 it appears that the video froze up.

04:39:52 25 THE COURT: Take your time.

1 (Pause in proceedings.)

2 THE COURT: Is it freezing up on you?

3 MR. BURSON: It's freezing up on me, Your Honor. I  
4 don't think it's vital at this point. I'd like to just go ahead  
04:40:38 5 and continue on, if I may.

6 THE COURT: Okay. Yes.

7 BY MR. BURSON: (Continuing)

8 Q So, Detective Williams, when we last left the video before  
9 these technical difficulties, you indicated that you agreed with  
04:40:49 10 me that there was a pen on the right side of EZ, correct?

11 A I believe so, yes. That's what it looks like.

12 Q And the second lineup, I believe you testified she made  
13 another identification, to the best of your recollection.

14 A Correct.

04:41:06 15 Q Okay. Do you recall making any similar movements with a  
16 pen when she made an identification during the second lineup?

17 A I don't believe I did.

18 Q Okay. And why wouldn't you have made a movement with a pen  
19 during the second lineup?

04:41:20 20 A Because I'd already given her a pen.

21 Q Okay. And to the best of your recollection, she still had  
22 that pen?

23 A Um-hmm. Yes.

24 Q And you administered two more lineups that day; is that  
04:41:32 25 right?

1 A Yes.

2 Q Okay. Did she make any identification in those lineups?

3 A I don't believe she did on the last two.

4 Q Okay.

04:41:56 5 MR. BURSON: Your Honor, I have no further questions at  
6 this time for Detective Williams.

7 THE COURT: Very well.

8 MR. McENTIRE: May I please have the --

9 THE COURTROOM DEPUTY: Yes.

04:42:14 10 MR. McENTIRE: Thank you.

11

12 CROSS-EXAMINATION

13 BY MR. McENTIRE:

14 Q Good afternoon, Detective Williams.

04:42:20 15 A Good afternoon.

16 Q You testified you've been a detective for approximately two  
17 years.

18 A Correct.

19 Q And that at the time of this lineup, that you had been a  
04:42:38 20 detective, roughly five months of experience at the time of this  
21 lineup.

22 A Correct.

23 Q I'm showing you what's been marked as Defense Exhibit 1002  
24 on your monitor.

04:42:51 25 Can you see that?

1 A Yes, I can.

2 Q This is the Yakima County Sheriff's Office Eyewitness  
3 Identification Policy.

4 Are you familiar with this document?

04:43:00 5 A Yes.

6 Q Perhaps a clarifying question: Are you familiar with this  
7 document now?

8 A Correct.

9 Q It appears to be a four-page document. What I'm going to  
04:43:16 10 do is I'm going to scroll through each page, just to confirm  
11 we're talking about the same thing. This is Page 2. Page 3.  
12 Page 4 (indicating).

13 And you recognize this document?

14 A Yes.

04:43:29 15 Q Does this fairly and accurately represent the Yakima County  
16 Sheriff's Office's identification policy?

17 A Yes.

18 MR. McENTIRE: Your Honor, I'd move to admit Defense  
19 Exhibit 1002.

04:43:40 20 MR. BURSON: No objection.

21 MR. SMITH: No objection.

22 THE COURT: It will be admitted.

23 (Defense Exhibit No. 1002 admitted into evidence.)

24 BY MR. McENTIRE: (Continuing)

04:43:45 25 Q Detective Williams, I want to draw your specific attention

1 to 1002-2, Policy 603.6, Photographic and Live Lineup  
2 Considerations. And it's at the bottom of the page, this first  
3 sentence reading (reading): When practicable, the member  
4 presenting the lineup should not be involved in the  
04:44:12 5 investigation of the case or know the identity of suspect.

6 Turning to the next page (reading): In no case should the  
7 member presenting a lineup to a witness know which photograph or  
8 person in the lineup is being viewed by the witness.

9 Did I read that correctly?

04:44:38 10 A You read it correctly, yes.

11 (Court conferring with IT.)

12 THE COURT: Sorry. Go ahead.

13 MR. McENTIRE: Thank you, Your Honor.

14 BY MR. McENTIRE: (Continuing)

04:45:35 15 Q Picking up where I left off, did I read that first sentence  
16 correctly?

17 A Yes, you did.

18 Q In your review of the video that we just watched, that  
19 segment of this identification or this lineup with EZ, in fact,  
04:45:48 20 were you aware of the photographs that EZ was looking at at the  
21 time of the lineup?

22 A Can you repeat that question?

23 Q You could see all of the photos.

24 A When I flipped through them, yes, I could.

04:46:03 25 Q You were sitting right in front of EZ at the same table.

1 A You're -- you're saying all the photos? I mean, I don't --

2 Q Yeah. Let me ask a better question.

3 You reviewed this stack of photos?

4 A When I flipped through them to check for the card -- or for  
04:46:20 5 the lineup card, yes.

6 Q Correct. And then you handed them to EZ.

7 A Correct.

8 Q And then EZ started going through them.

9 A Correct.

04:46:28 10 Q And during that time, there's nothing obstructing you  
11 seeing what EZ could see during that time.

12 A During that time, no.

13 Q So you could see what photos --

14 A When she was reviewing them, I could see them, yes.

04:46:39 15 Q Exactly.

16 And so you would agree, knowing what you know now about the  
17 Yakima County Sheriff's Office's policies, that by allowing you  
18 to see everything that happened you committed a policy  
19 violation.

04:46:50 20 A Correct.

21 Q I think an important clarification: At the time that you  
22 were doing this, you didn't intend to go into this lineup to  
23 commit a policy violation.

24 A No.

04:47:07 25 Q It's just something that you weren't aware of.

1 A Correct.

2 Q And you would agree that this was an improper action for  
3 you to take.

4 A Well, it was a policy violation, if that's what you mean.

04:47:29 5 Q But you weren't aware there was a policy violation.

6 A At the time, no.

7 Q And so it's possible to do something that was improper  
8 without realizing it at the time. Fair?

9 A Sure.

04:48:06 10 MR. McENTIRE: Your Honor, the next set of questions  
11 basically is going to involve reviewing certain snippets from  
12 the video, and we can take a shot at it. I've got clips that  
13 are pulled out.

14 THE COURT: Let's try. And, Counsel, if it doesn't  
04:48:27 15 work, we can try to come up with a solution by tomorrow, but  
16 apologies for that.

17 (Whereupon a video clip was played.)

18 MR. McENTIRE: I think we're having the same audio issue  
19 that we were having as the United States, Your Honor. It may be  
04:50:13 20 that this is the best time to ...

21 THE COURTROOM DEPUTY: Judge, what we've done before is  
22 put the microphone right next to the computer speaker.

23 THE COURT: But if we do that, then we don't have the  
24 video on the screen.

04:50:37 25 THE COURTROOM DEPUTY: No, literally putting the

1 microphone down next to the computer speaker, we've done that  
2 before and it's worked.

3 THE COURT: But there's no audio on the speaker because  
4 it's going through the system. So if you unplug it, could you  
04:50:50 5 unplug it and play the video and put the microphone there next  
6 to the witness?

7 MR. BURSON: If the computer has a VGA hookup, I believe  
8 you can hook the video in where you're sitting, leave the green  
9 plug out so that the audio will be going to the system but the  
04:51:09 10 video will --

11 THE COURT: That is way above my technology abilities.

12 THE COURTROOM DEPUTY: Maybe that's what we had before,  
13 but I just know it worked before, so ...

14 THE COURT: No audio.

04:51:49 15 MS. YOUNGCOURT: No audio at all with VGA.

16 MR. McENTIRE: This may be a -- this may be a pause to  
17 consult with the Court's technology for the day and see if we  
18 can ...

19 THE COURT: I think that's probably a fair assessment.  
04:52:09 20 Let's -- let's do this: Let's break. I'm being told that there  
21 are some difficulties with this that might -- may not be  
22 resolved by the morning. I can tell the parties that I have --  
23 I have watched this with the audio, and I have heard the  
24 statements. I can tell you that I haven't paid as close  
04:52:35 25 attention as apparently all of you have to pens moving around



1 and things being said. So I can certainly do that, but I  
2 imagine that there are questions to be asked.

3 So let's try to figure out how to play that, and we can  
4 try and do that overnight. So this is probably a good idea to  
04:52:59 5 break at this time.

6 Detective, I'll remind you that not to discuss your  
7 testimony with any of the parties or any other witness here  
8 today, and with that -- actually, I do have other questions.  
9 Let's -- for the attorneys, so at this point, sir, you are  
04:53:20 10 excused. Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: The question that I have for you folks is  
13 the amount of time that we need. So I guess I need to know,  
14 understanding how fast we've been rushing through all of this,  
04:53:39 15 how much time you all need for the remainder of the witnesses  
16 and argument.

17 MR. BURSON: I don't see the Government needing another  
18 hour in the morning for its final witness. I don't know how  
19 cross, how long cross will go with this particular witness.

04:53:59 20 THE COURT: All right. So that takes care of the one  
21 witness. And with regards to, it's my understanding there are  
22 three witnesses for the defense.

23 MR. McENTIRE: Your Honor, there are -- after Detective  
24 Williams there are one additional witness for the United States,  
04:54:19 25 which is Detective McIlrath. I expect the cross-examination of

1 Detective McIlrath to be quite short, because it's largely going  
2 to be addressed through questions towards Detective Williams.

3 THE COURT: Okay.

4 MR. McENTIRE: I think -- I believe that is all of the  
04:54:39 5 United States' witnesses.

6 MR. BURSON: That's correct.

7 MR. McENTIRE: I have a short set of questions for  
8 Investigator Chris Reyes regarding his interview with LL, and  
9 then I think the most substantive block would be essentially  
04:55:00 10 Dr. Cara Laney, the eyewitness identification expert. And so I  
11 don't envision the cross-examination of Detective Williams to  
12 last that long in the morning. It's just a few clips that I  
13 plan on showing her [sic], and so I'm thinking under -- under  
14 20 minutes in terms of questions, 15 minutes for Detective  
04:55:21 15 Williams and a very few questions for Detective McIlrath, to  
16 give the Court an idea of the cross-examination of the -- of the  
17 Government's --

18 THE COURT: I imagine that Dr. Laney is going to take a  
19 bit.

04:55:32 20 MR. McENTIRE: Correct, Your Honor.

21 THE COURT: All right. And Mr. Rojan?

22 MR. McENTIRE: It would be Investigator Chris Reyes,  
23 Your Honor, and I imagine my direct would be ten minutes.

24 THE COURT: Okay. And you have listed another witness  
04:55:47 25 as well.

1 Is that witness not intending to testify?

2 MR. McENTIRE: Both Chris Reyes as well as Cole Rojan  
3 were present at the interview of LL. I listed Cole Rojan as a  
4 precaution; however, I intend to call just one of them, and it  
04:56:06 5 would be Chris Reyes.

6 THE COURT: Okay. Why don't we do this: Let's try to  
7 be everyone here tomorrow at 8 o'clock instead of the 9:00 or  
8 8:30. I like 8:30, but given what's to come, I want to make  
9 sure we finish. So let's plan on -- everyone loves to get up  
04:56:23 10 early, so let's all plan to be here at that time, and hopefully  
11 we can figure out these issues.

12 Any other questions, Counsel?

13 MR. BURSON: Not from the Government, Your Honor.

14 MR. McENTIRE: And not from James Cloud.

04:56:38 15 MR. SMITH: No, Your Honor.

16 THE COURT: Very well. Thank you for your presentations  
17 today, and we will be in recess. Thank you.

18 THE COURTROOM DEPUTY: All rise.

19 Court is now adjourned.

20 (Court adjourned at 4:56 p.m.)

21

22

23

24

25

C E R T I F I C A T E

I, KIMBERLY J. ALLEN, do hereby certify:

That I am an Official Court Reporter for the United States District Court for the Eastern District of Washington in Richland, Washington;

That the foregoing proceedings were taken on the date and at the time and place as shown on the first page hereto; and

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this 28th day of October, 2020.



Kimberly J. Allen, CRR, RMR, RPR, CCR(WA)  
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Richland, Washington